Effective Enforcement of Social Legislation Pertaining to Women

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EFFECTIVE ENFORCEMENT OF SOCIAL LEGISLATION PERTAINING TO WOMEN

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PREFACE

The Centre for Public Policy (CPP) at the Indian Institute of Management Bangalore is envisioned as a catalyst for new thinking and new directions in public policy and management. The CPP functions as a think-tank to facilitate open debate and dialogue on key public policy and management issues, backed up by in-depth research and analysis, and training and teaching programmes. It engages government and non-government actors through seminars, round-tables, and conferences, both national and international. Its mission is to change closed mind-sets to more open ones, build capacity for rigorous policy analysis and innovative thinking, and stimulate creative problem solving.

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Comments are welcome and may be sent to the author at prshigh-edu@karnataka.gov.in.

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1 Introduction

Social reformers and women's rights activists have, in the last 200 years, campaigned successfully for the enactment of laws to protect women from cruel and harmful practices as well as to ensure them equal rights with men. Many of the political campaigns for women's rights have been successful, in so far as the State responded by enacting new legislation. Laws prohibiting sati, child marriage, dowry and rape have all been passed, as have laws removing obstacles to women's right to own property, suffrage and employment. However, although the laws have been enacted, there is a general disillusionment with regard to their enforcement and women's rights activists have found to their disappointment that most of the laws are only ornamental. No doubt economic changes and the forces of development have brought some changes in women's lives - more women are educated and many are doing well in fields which were closed to them earlier, such as engineering, medicine and the civil services. The general improvement in the standard of life has brought salutary changes to women's lives as well.

However, infant and maternal mortality rates are still unacceptably high, showing the low nutritional and health levels of women and the poor access which they have to the public or private health system. The educational levels of women continue to be much lower that those of men and it was only in the 2001 population census that the literacy rate of women reached the 50% mark (Government of India, 2001) - which only means that half the population of women in the country know how to write their names. In the many parts of the country, including some districts of Karnataka, the literacy levels of women are much less than this - in some areas less than 20% (Government of Karnataka, 1999).

Equality remains a distant dream despite the promises made in the Constitution fifty years ago. A recent study shows that only 13% of the daughters of land owning fathers have inherited property from their fathers (Chen 1998). Probably these are women who have no brothers. Only 50% of widows have inherited their husbands' property and they hold it jointly with their sons. The Hindu Succession Act, 1956 has made no real difference to the enjoyment of inheritance rights by daughters — almost all of them give up their rights in favour of their brothers in order to retain their goodwill or to avoid social stigma. In other cases their fathers will away the property from their daughters. Most women in India have no property in their name - whether house or land. In addition, because of the disparity in educational levels, more women than men work in low skilled, poorly paid jobs. The 1991 census showed that 80% of the agricultural labourers in the backward districts of North Karnataka are women (Government of India 2001).

Besides this, the sexual division of labour burdens women with the unpaid work of the household and as carers of the sick, the very young and the very old.

In an increasingly violent society the pressures and frustrations of modem life along with the rising tide of consumerism and greed find their outlet most easily in the form of violence against those who are most vulnerable - women and children. The media feeds us daily with horrific stories of rape, including those of young children and of infants. Child prostitution is on the increase in this country as in some other poor countries which do not take adequate care of their young. Sexual harassment in the workplace and on roads and public places makes life a daily hell for many women.

However the crime most prevalent against women is undoubtedly that or domestic violence, making home in many cases the most dangerous place for a women. While it is naturally difficult to get accurate figures regarding the incidence of domestic violence, studies have shown that 60% - 80% of women in India have faced domestic violence at some time or other (ICRW, 2002). In a recent NDTV interview with the economist Bina Agarwal, aired on 7/8/2003, she stated that 49% of propertyless women have suffered long-term physical abuse from their husbands and 82% have suffered psychological abuse. Domestic violence destroys the confidence and quality of life or a woman since she lives in constant fear. It also destroys her health and sometimes her life itself. Alcoholism is very often indicated as the reason for domestic violence. Although alcoholism may be a contributing factor and is certainly very wide spread - with the State playing an active role in encouraging the consumption of alcohol as a means of increasing its revenues (male Government servants have been heard to admit that they are afraid of going into villages after seven in the evening because of the drunkenness everywhere) - the main reason for domestic violence is decidedly the fact that it is accepted as a way of life and there is no one to question the wife beater. There is a total lack of understanding of the horror of domestic violence by the predominantly and almost wholly male police force, public prosecutors and judiciary. It belongs to the domain of what the French sociologist Pierre Bourdieu (1998) terms 'doxa' - that which is accepted as a natural and self evident part of the social.

Assault and battery are crimes already covered under the Indian Penal Code but the beating of wives within the home has not drawn the penalty under these provisions because of the cultural division of society into 'public' and 'private' spheres. Women's groups have long been divided on the issue of the necessity of a separate enactment for domestic violence. While some groups are of the opinion that such an enactment is needed because it will bring this private crime into

the public sphere, others feel that it will only serve to further push crimes against women into a ghetto as in the case of the murders of young wives which are euphemistically termed 'dowry deaths' in the Indian Penal Code. A Bill against domestic violence was prepared by the Union Government in 2001 but it was so badly drafted that it raised the ire of women's groups all over the country which fortunately stalled it before it could be presented in Parliament.

'Dowry death' or the deaths of young women by suicide or murder within the first seven years of marriage is on the increase everywhere, including the relatively progressive southern States. Vimochana, a women's organisation based in Bangalore, has after a detailed study established that an average of three such deaths occur every day in Bangalore alone(Vimochana 1998-1999). Most of these never enter the State Crime Records since they are closed at the initial stage, often at the level of a police constable, as a 'stove burst' case - that is a kitchen accident occurring due to a stove burst (80% of dowry deaths are due to burning). Even for the few cases, which reach the courts, the conviction rate is only about 20%, mostly due to poor investigation by the police, poor prosecution and witnesses turning hostile.

The most telling evidence of the unequal position of women in this country and the violence and discrimination meted out to them from birth is in the age specific mortality rates. The age-specific mortality rates for women exceed that of men throughout childhood and for the childbearing ages (International Institute for Population Studies, 2000). This is, as is well known, at variance with the mortality rates in developed countries where the sex ratio is favourable for women because of their superior biological. strength. It is only because of the unnatural and discriminating conditions women are subjected to that the sex ratio is adverse in India and has been steadily falling throughout the 20th century. There are about 32 million less women than men in India, giving rise to Amartya Sen's famous question "Where are all the missing women?"

The contemporary women's movement has sought to challenge and redefine prevailing constructions of gender identity in revealing the multiple ways in which women have been victims of male violence, harassment and discrimination, particularly in the private sphere of the family. Social reformers and feminists have had a significant impact in these efforts to redefine the meanings of gender and tradition and to get laws enacted. However enforcement of the laws remains a struggle.

If we consider the oldest laws in the statute book, enacted in the 19th century to prohibit some of the more obnoxious cruelties, which were perpetrated against women, such as the Sati Abolition

Act (1829) and the Sharda Act (1929) to raise the age of consent, we find that some of those old issues are alive even today. True, there may not be more than one case of sati being committed over a period of one or two years but Roop Kanwar's murder in 1987 brought to light the popular sentiments that still prevail in certain sections of society. Roop Kanwar's sati was glamourised and commercialised with sati temples coming up all over Rajasthan and politicians of different parties rushing down to the site of the murder to pay their respects. Although the hysterical demonstrations in favour of sati were inspired by many factors, including that of Rajput identity, the commercialization could not have been so successful but for some popular sentiment regarding the 'real' Indian woman, her self sacrificing nature and her total submersion of self in that of her husband. Similarly, more than a hundred years after the enactment of the Sharda Act, little girls of twelve are still getting married, though in fewer numbers than earlier. The average age of marriage for girls in India, according to the 2001 census, is still much less than eighteen years, bringing with it all the attendant evils of premature marriage (Government of India, 2001). However there is no longer any argument, as there was in the 19th century, as to whether the shastras prescribed or prohibited child marriage. The reasons for child marriage now are based mainly on tradition; the concept of control over women's sexuality and in some cases the lack or other avenues of activity such as schooling or work.

Relatively recent enactments such as the Dowry Prohibition Act (1961) which is forty years old, are openly flouted everywhere by everyone. It is an open secret that despite the Pre-Natal Diagnostic Techniques (Regulation) Act (1994) doctors are making a fortune by revealing the sex of the foetus and aborting it if it is female. The practice is so rampant that in some places the sex ratio has fallen to less than 800 and men are unable to get brides. The kind of violence which will be perpetrated on girls in such an unnatural scenario may well be imagined.

The paper will attempt to examine why social legislation is not being enforced. Is it because the problem has not been understood in its entirety and the law addresses only part of the problem? If that is the case then the law may seem to confer equality but, by not realizing the disadvantages imposed upon women by society, the impact of the law may not be equality. In other words the law may be informed by only formal and not by substantive equality. On the other hand, the law itself may be grossly faulty because it is framed by a patriarchal mindset. An example is the Bill against Domestic Violence (2001), which exempted the beating up of a wife from the definition of domestic violence if it was done by the husband in defense of property!

Is the law too inherently conservative to bring about social reform? Or is it that activists and

reformers have not exploited the full potential of the law? What are the ideological implications in the legal regulation of women? Even when the law promises substantive equality and justice, do legal interpretations often reflect the patriarchal ideology? And are these concepts changing with changing times and the campaigns by activists?

The paper will discuss whether one of the reasons why social legislation is not being enforced is because society is not yet ready to accept progressive ideas. Or is this reason only a half-truth and used as an excuse for non-enforcement? Perhaps the truth is not so much that society does not accept the ideological basis for the laws but that enforcement is difficult because social legislation protects the interests of the disadvantaged and marginalized against those of the powerful and the influential. The paper will examine whether because of this and other reasons the legal system is inaccessible to the majority of Indian women.

The paper will explore why it is that women's groups and non government organizations (NGOs) who have, after vigorous campaigning, managed to pressurise the Government to enact the legislation, are unable to carry the campaign to its logical end by ensuring enforcement.

The paper will examine the role of the Government in enforcing social legislation. How serious has the Government (that is, the legislature, the executive and the judiciary) been in enforcing social legislation? What infrastructural and budgetary support has the Government provided to ensure the enforcement of the law? What monitoring mechanisms and institutional supports are in place? It is surely the role of Government to provide the systemic change required to ensure enforcement.

In order to suggest the steps necessary to ensure enforcement, the paper will discuss in detail the genesis and implementation of two Acts, the Dowry Prohibition Act, 1961 and the Family Courts Act, 1984.

Lastly, the paper will strive to arrive at some understanding of the action required to be taken by different protagonists to improve the enforcement of social legislation. What is attempted is not an academic exercise but a pragmatic resolution of the issue.

2. History Of Social Reform And Women's Rights Movement

No analysis of whether the law can be an instrument of social change will be complete without tracing the history of the social reform and women's rights movements of the 19th and 20th centuries. It will be seen that while these movements campaigned vigorously for legal reforms both to protect women from violence and oppression and to grant them equal rights in all spheres, they were not optimistic regarding the ability of law alone to bring about changes in women's lives. The social reformers of the 19th century hoped that law reforms would have an educational impact although they did not expect that the law would be obeyed just because it was enacted. The women's rights activists of the 20th century are aware that unless the ideological beliefs which are at the root of women's oppression are removed from the minds and hearts of people, particularly of those who are responsible for the interpretation and enforcement of the law, no great change can he expected in the lives of women. At the same time reformers, although aware of the limitations of law, also acknowledge its importance. Law initiates change and is the basis for the struggle to bring about change.

2.1 Social Reforms of the 19th century

The social reformers of the 19th century were all men. Almost all of them were from the rising middle classes of Bengal and Maharastra, the parts of India, which had greatest contact with the British colonial regime. Imbued with western ideas they sought to reform their society by the eradication of violent and harmful social customs, most of which revolved around the subjugation and oppression of women. While doing so they ran against a counter movement of traditionalism and fundamentalism, which opposed any movement towards reform as interference with their religious arid cultural autonomy. The British on their part sought to justify colonial rule on the 'barbarity' of Indian society while at the same time showing extreme reluctance to enact legislation to prohibit even the most extreme of these practices.

Three social customs in particular engaged the attention of the reformers: sati, the prohibition of widow remarriage and child marriage.

Raja Ram Mohan Roy spearheaded the campaign against sati. The discourse centred on whether or not sati had the sanction of the shastras. Raja Ram Mohan Roy argued that sati was not prescribed by any shastric text whereas his opponents attempted to prove the scriptural

legitimacy of sati. The abominable cruelty of the practice formed no part of the argument of either side although this of course was the reason why the reformers opposed it. As the scholar Lata Mani argued that women were not the focus of the debate (1998). It was only when, in 1817, Mrityunjaya Vidyalamkara, the Chief Pundit of the Supreme Court, announced that sati had no shastric sanction that, in 1818, the provincial governor of Bengal, Sir William Bentinck, prohibited sati in his province. When Bentinck became Governor General of India, he passed the Sati Abolition Act in 1829. It is interesting to note that Ram Mohan Roy himself was not in favour of legislating against sati for fear that it would make the stand of the pro sati propagandists even more rigid and lead to an upsurge of cases of sati. This was exactly what happened - orthodox Hindus in Calcutta formed the Dharma Sabha to campaign against the abolition of sati and there was an increase in the cases of sati as a backlash against the law. Despite the support extended by Roy and other reformers to the Sati Abolition Act, the Government buckled under pressure and amended the Act to permit sati in cases where the woman did it "voluntarily".

The lifting of the ban on widow remarriage was the result of a growing social reform movement led by Iswar Chandra Vidyasagar who showed that widow remarriage was accepted by the shastras and debated the issue with Hindu pundits in Sanskrit. The fact that several Hindu communities permitted widow remarriage and it was mainly the Brahmins who prohibited it strengthened the hands of the reformers. However after the ban was lifted the instances of widow remarriage remained very few. In the 1890s it was reported that in the forty odd years since the Act was passed, there had been only five hundred widow remarriages and these were all "virgin widows" - or in other words, child widows. Even to this day widow remarriage is rare enough to be commented upon.

The practice of child marriage was another social evil against which social reformers such as Ranade and Malabari campaigned in the latter half of the 19th century. In 1860 the Criminal Law Amendment Act 10 revised section 375 or the Penal Code to raise the age of consent to 10 years. In the 1880s, when Malabari sought to raise the age of consent to 12, a fierce controversy erupted. Even such respected leaders as Bal Gangadhar Tilak were against the Bill. His reasons were twofold - he believed that education and not law could bring about social change and, as a nationalist, he was reluctant to ask the British to help bring social reform. In addition to nationalists like Tilak, traditionalists reared their heads to defend the practice of child marriage on the grounds of religion, culture and morality. They argued that Hindu society is so constituted that early marriage is a necessary institution for the preservation of the social order and its abolition would destroy the system of joint family and caste. However, although the British Government in India was reluctant to raise the age of consent to 12, Malabari took the matter directly to London and

despite intense opposition the Bill was passed. At this time there occurred the horrifying death of Phulmonee, a girl of 10 or 11 years, who died after suffering agony for thirteen days after she was raped by her 35-year-old husband. The husband was acquitted of both rape and murder since Phulmonee had, at the age of 10, reached the legal age of marriage. This incident embarrassed the opponents of the Bill and helped in its passage. Subsequently the minimum age of marriage was raised in stages till the present 18 years. However even the most avid supporters of the Bill recognized that the enactment of the law would not stop the practice and that it was only an educative measure. At best, it strengthened the hands of fathers for protection of their daughters.

In the case of all the three pieces of social legislation described above - sati, removal of the ban on widow remarriage and the raising of the minimum age of marriage - the basis for the opposition to the enactment and to its enforcement was the strong belief that law cannot interfere in the private sphere of the family, religion and custom. The family was, and is still, conceived as the sacred, indissoluble unit of society and central to familial ideology is the concept of the woman whose chief and highest role in life is that of the self-sacrificing wife and mother who endures all and cheerfully submerges her individual interests in the interests of her husband and his family. The familial ideology exerted absolute control over women's sexuality, hence the concept of the 'pure' Indian woman, upon whose 'honour', which meant chastity, the family honour depended. This was also the reason why child marriages were given such importance by the upholders of tradition; a little child entering the house as a bride would undoubtedly be 'pure' and a virgin and could easily be taught to accept the mores and values of the family she entered as daughter in law. Whether this conceived role of women was higher or lower than that of men was beside the point; what was important was that their role was different from that of men. They were the 'other' and hence the question of equality did not arise. In fact even the social reformers of the 19th century did not urge the concept of equality of women; their efforts were concentrated on the protection of women from violent and oppressive social practices by the enactment of social legislation and through education and propaganda.

2.2 Women's Rights in the Independence Struggle

Equality was however central to the women's movement during the independence struggle in the early decades of the 20th century. This phase of the reform movement was led by women, not men and saw the emergence of many all India women's organisation such as the Women's Indian Association which was set up in 1917, the National Council for Women in 1925 and the All India Women 's Conference 1927. Perhaps because of the furore over the legislation regarding child marriage, these organisations did not initially urge for law reform. Instead they espoused a

new political and social agenda based upon the concept of equal rights. The two main planks in the agenda were the campaigns for political representation and constitutional equality and the campaign for the reform of personal law.

Leaders such as Sarojini Naidu and Annie Besant continued to uphold the traditional ideal of Indian womanhood but campaigned for the 'upliftment' of women by reform of social practices and by the opening up of educational opportunities for women which, besides helping them to be better wives and mothers, would also help them to bring the feminine values of sacrifice and endurance into public life so as to ennoble society. In this way these leaders of the women's movement in the early 20th century not only strove for social reform but advocated a role for women beyond that of the family.

The movement soon progressed to campaigning for women's equality by removing the legal and social inequalities, which prevented women from realizing their full potential. They advocated universal adult franchise and reform in personal laws to give women equal rights in inheritance, marriage and divorce. The Constituent Assembly accepted these recommendations for equal rights for all citizens irrespective of gender or caste and the Constitution of independent India (1948) enshrines the promise of equal rights for all. Article 15 of the Constitution prohibits discrimination on the grounds of sex. Article 15(3) allows for special measures for women and children. Article 16 guarantees equality of opportunity in employment and prohibits discrimination on the basis of sex in employment.

The women's movement thus won success in its effort to win legal equality in the public sphere fairly easily. It was a different matter altogether to achieve equality in the private sphere or property rights and in personal law.

The demand for a Hindu code that would remove all legal disabilities of women in marriage and inheritance was first raised by the All India Women's Conference in 1934 Conservative and orthodox voices within the Congress, as well as those of the Hindu Mahasabha, strenuously opposed the Hindu Code Bill. The proposed reforms to Hindu laws were seen as leading to the destruction of the family. Property rights for women were, in the words of Pandit Thakur Das, "equality run mad". Inheritance rights for daughters, equal divorce rights and the monogamy clause were among the most controversial and intensely debated of the proposed reforms. Opponents of the Hindu Code Bill asserted that it was unfair for men and women to have the same property rights since men's and women's obligations and responsibilities were different. In

other words, they were asserting once again that women's role was restricted to the nurturing of the family. The Hindu Code Bill was defeated when it was brought up before the provisional Parliament, resulting in the Law Minister Ambedkar tendering his resignation, to his lasting credit. It was only in 1955 that four separate pieces of legislation were enacted which significantly improved the, legal status of women under the Hindu personal law. The Hindu Marriage Act, the Hindu Succession Act, the Hindu Minority and Guardianship Act and the Hindu Adoption and Maintenance Act were all enacted in 1955. It should however be noted that The Hindu Succession Act, while granting daughters equal inheritance rights in the father's property, did not give daughters coparcenary rights in the joint family property. This was because of the ideological construction that sons remained within the natal family whereas daughters transferred to another family after marriage. Thus familial ideology once again came in the way of equal property rights for women

2.3 The Contemporary Women's Movement

The contemporary women's movement which began in the late 1970s has once again turned to law reform in order to obtain gender justice. It campaigned against forms of oppression and violence against women such as rape, dowry, sati, sex selection and sexual harassment and agitated for reforms in the law on these issues. However the contemporary women's movement was not seeking the 'protection' of women in the manner of the social reformers of the 19th century, but was campaigning for the rights of women - the right of choice and control over their lives and the right to lead lives of dignity and confidence. Their agitation ran counter to the dominant ideology of Indian - not just Hindu - society regarding the 'natural' role of women as wives and mothers and as subordinate partners in domestic life. The contemporary women's movement has thus its roots in its challenge of patriarchal concepts of women's role and sexuality.

A national campaign for the reform of rape law emerged around the rape in 1974 of a young tribal girl aged about 18 years called Mathura who was raped in police custody. The policemen were acquitted by the Sessions Court, convicted on appeal to the High Court and later acquitted by the Supreme Court. The Supreme Court held that there was insufficient evidence that Mathura resisted the sexual intercourse and that the fact that she had a boy friend proved that she was a loose woman who could not, by definition, be raped. The open letter written by four senior lawyers against the judgement sparked off the protest by women's groups. The women's movement was trying to challenge the prevailing social understanding of rape that the absence of injuries implied constant and that only the 'utmost resistance' - perhaps to the extent of being killed - could prove that the victim did not consent. The second assumption in the Supreme Court

judgment challenged by the women's movement was that the victim's character was relevant in the case of rape and that if the woman had illicit sexual or even social relationship with any man, then she was a 'loose' woman and any man was free to forcibly violate her. As stated by a woman's organization, "For us rape is an act of hatred and contempt - it is a denial of ourselves as women, as human beings - it is the ultimate assertion of male power".

The rape of Maya Tyagi in Baghpat, Haryana, who was also raped by policemen in 1980, intensified the protests of women activists. The entry of politicians into the fray however transformed the issue with their cries of the 'dishonour' brought on women. This was the old patriarchal concept of any extramarital sex, even rape, being a matter of shame and dishonour for the woman, not for the man. As stated by women activists - "How can your honour be taken away when you yourself have committed no crime?"

The women's movement demanded that the onus of proof regarding consent in rape cases be shifted to the accused and that the account of the woman's past sexual conduct be excluded from the rape trial. The Law Commission included these demands of the women's organisations in their recommendations for comprehensive reforms in the rape laws. However the amendments to the rape laws, which were finally passed, did not include many of these recommendations. It was only in the case of custodial rape that the issue of consent was considered irrelevant.

The aftermath of the amended rape law shows how signally the law can fail to give justice to women. The reform had very little effect in challenging the traditional definition of rape and judges continued to hold the same assumptions about women's sexuality. Ten years after the Mathura judgment, the Supreme Court reduced the minimum mandatory sentence of ten years imposed on two policemen for raping a young woman - Suman Rani - to a maximum of five years. The reason given was that the victim was a woman of "loose" character. In other words, despite the amended law the Supreme Court judges continued to hold to the ideology that no woman was free to choose her lovers, and if she did so then it was permissible to punish her as violently as one pleased.

What is really disquieting is that some of the court judgments passed during the height of the campaign for rape law reform were far more enlightened than those passed after the amendment. The lawyer and activist Flavia Agnes (1992) mentioned a case reported in 1989 where a little girl aged 7 - 10 years was raped by a man of 21 years in the presence of two eyewitnesses. The sessions court convicted the accused to life imprisonment. This was however set aside by the Delhi High Court on the ground that although the girl had injuries on her body and there was

enough evidence to show that she had been raped, there were no injuries on the man. Earlier the girl had to prove she had not consented to the rape by incurring injuries on her own body but now even that was not adequate - she had to inflict injuries on the rapist. And this was a case where the victim was a small child and the rapist a fully-grown man (Mohammed Habib v. State, 1989 CrLJ 137).

Although the minimum punishment for child rape is 10 years according to the 1983 amendment, the tendency of the courts is has been to treat the accused with leniency in cases where the crime is committed by young men. The Madhya Pradesh High Court has gone to the extent of stating, "Increasing cases of personal violence and crime rate cannot justify a severe sentence on youth offenders" (Vinod Kumar and Another Vs State of Madhya Pradesh, 1987, CrLJ 1541).

Women activists continue to campaign for further reforms of rape laws. At the same time experience has made them sceptical of any great improvement in the possibility of women getting justice as long as there is no change in the attitude of both society and the courts with regard to women and sexual crimes. Rape, which is one of the most brutal of the forms of violence perpetrated on women, continues to be grossly under reported because of the 'shame' and ostracism visited on the victim. For those cases in which complaints are made, the conviction rate is only about 4%.

The women's movement intensified their campaign for reform of personal laws through a Uniform Civil Code in the wake of the Shah Bano controversy wherein a 73 year old Muslim woman, who was given the talaq by her husband of 40 years brought a petition for maintenance under section 125 of the Code of Criminal Procedure (CrPC). The case reached the Supreme Court in 1985. The Supreme Court held that she was entitled to the maintenance and also made some uncomplimentary remarks about Muslim personal law that created a furore in the country. The Government finally buckled under pressure from Muslim men to pass the Muslim Women's (Protection or Rights on Divorce) Act in 1986 despite the opposition of women activists and others. According to this new law, divorced Muslim women were not eligible to maintenance from their husbands under section 125 of the CrPC but had to fall back on the Wakf Board for maintenance. This was a major victory for traditionalists with their cry of 'religion in danger' as soon as any positive steps are taken for the improvement of the position of women.

It has to be pointed out that the women activists and liberals who agitated against the Act during the Shah Bano controversy were considerably embarrassed to find that the forces of the

Hindu Right - the Bharatiya Janata Party (BJP), the Rashtra Swayamsevak Sangh (RSS) and the Vishwa Hindu Parishad (VHP) had also joined them in their agitation for a Uniform Civil Code. Their interest was not of course in putting in place a just legal frame for all women but to drive the practitioners of a minority religion into a corner. The very next year some of these same forces were making the same outcry of 'religion in danger' in the wake of the demand for legislation regarding sati after the horrifying murder of Roop Kanwar, a teenaged widow who was burnt alive on the pyre of her husband in Deorala, Rajasthan in 1987. There followed in Rajasthan a campaign to glorify sati, which was supported by several components of the Hindu Right. The Rajasthan Government did nothing to punish those who murdered Roop Kanwar or those who glorified the incident. The Rajputs held that the Government had no right to interfere with what they held to be their culture and identity. Although the Government had no difficulty in passing the Sati Abolition Act and although the strident pro sati campaign was restricted to certain sections of the populace in one or two States in North India, the very fact that there was some support for such an indisputably horrible act of cruelty and murder a hundred years after it was first abolished, is revolting. There was some difference however in the campaign against sati in the 20th century - those in the anti sati movement did not attempt to show that the shastras did not permit it - they termed it as a heinous case of violence against women and as murder.

The Shah Bano case and Roop Kanwar's sati showed how easily the gains made by women through law reforms and by the general wakening of the modern age to egalitarian and liberal modes of thought and action can be negated through traditionalist and fundamentalist forces. These forces insist on keeping women confined to the family in the position of dependency and deny them any independent identity.

It may be seen from this brief overview that laws have been enacted and amended in response to the demands of social reformers and the women's movement even if the amendments have in many cases fallen short of, or not conformed fully, to the recommendations of the activists. An exception of course, was the Shah Bano case where the State enacted legislation in the teeth of the opposition by women activists and liberals. However women's groups are disillusioned about the power of law to change women's lives. The relative unimportance given to women's lives and happiness, the strongly held beliefs regarding what constitutes a 'good' and a 'bad' woman, the patriarchal concept regarding woman's 'natural' role as wife and mother and the control that men exercise over women's sexuality have imbued many judicial pronouncements and taken away with one hand what the law had given with the other. The other reasons why it is difficult for women to access the courts or to hope for justice from the present system will be discussed subsequently.

3. Concept Of Equality In Law And Judicial Pronouncement

The familial ideology, which is central to Indian social relationships and is firmly held by all communities and religions in the country, is that woman's chief and highest roles are those of wife and mother - the dutiful, chaste and obedient wife who holds the family together and the loving, self sacrificing mother. The social and biological role of women as wives and mothers is thus naturalized and universalised. This ideology not only enforces the moral regulation of women but also the economic regulation; when the role of breadwinner is that or men it follows that women are economically dependent on men. The familial ideology assumes the economic dependence of women as a natural part of the social order. This concept of the role position of women continues to be held unquestioned despite the fact that the real picture is somewhat different. The population census has shown that 25% - 30% of the households in India are headed by women because of the desertion or migration of men (Government of India, 2001). Most women are workers as well as wives and mothers and work inside or outside the homes to eke out the family income. Many also put in unpaid but productive work on the family land or in the family business. For instance, many male artisans are actively assisted by their women. A larger number of women are also now working in salaried jobs including those in professional fields. In addition to all this women continue to shoulder the household responsibilities of cooking, cleaning and looking after children and old people.

However the actual contributions of women make no difference to the strongly held beliefs of familial ideology. This results in the disinheritance of daughters and skewed power relations between men and women.

Another important aspect of the familial ideology is the belief that the family belongs to the private sphere where the State cannot intervene. This effectively protects men when they commit acts of hostility, oppression and violence against women within the family. The State itself, both through laws and through the attitudes of the law enforcing agencies, reinforces this concept of the family as a private domain in which none can interfere. The State's refusal to criminalize marital rape despite the recommendation of the Law Commission is an example of the reluctance of the State to intervene in the private sphere of the family.

The dominant familial ideology runs counter to the promise of equality given by the Constitution. How can the Constitutional guarantee of equality be realized if women's position is not perceived the same as that of men? The paper will show that there is a dichotomy and many of the laws in the 'private' sphere of property rights and marriage are in fact different for

men and women. Some other laws appear to be equal and gender neutral but the impact of the law is different for men and women and results in inequality. Still others, such as the Equal Remuneration Act of 1976, have not helped women to obtain justice because of the manner in which it is implemented. Judicial pronouncements also are informed with the accepted notions of women's place - they are protective of 'good' women - that is those who adhere to the concept of the dutiful wife and mother and are unsympathetic to those who do not correspond to this dominant image - as in the Mathura rape case.

Some judicial pronouncements have attempted to deliver even-handed justice. However a formal approach towards equality in the sense or applying the law equally to men and women does not always result in equal treatment. Substantive equality, on the other hand, takes into account the disadvantages that women suffer from because or social prejudices and economic dependence and ensures that the impact of the law is one of equality. The paper will discuss some of these judgments to show the difference between formal and substantive equality. Although most of these judgments have nothing to do with social legislation, they are being discussed briefly to show the importance of analysing how a law, supposedly of a progressive nature, actually affects women in the enforcement.

The personal laws relating to divorce for different communities are, on the whole, grossly unequal. Among Christians, for instance, men can get a divorce on the grounds of adultery alone, whereas women have to prove charges of cruelty along with adultery against their husbands in order to obtain divorce. Under Muslim law, a husband has a right to extra judicial divorce without stipulating any grounds while the Muslim wife can obtain a judicial divorce only on the grounds stated within the provisions of the Dissolution of Muslim Marriage Act, 1939. Divorce for Hindus, Sikhs and Jains is governed by the Hindu Marriage Act, 1955. Although the Hindu Marriage Act contains the same provisions for men and women, judicial pronouncements on what constitutes 'cruelty' for instance are informed of the familial ideology of what constitutes a 'good' wife. For example, a decision by the trail court in Karnataka held that the wife's removal of the mangalsutram was an act of cruelty, although this decision was overturned by the Karnataka High Court (AIR 2002, Karnataka 256).

The law on adultery is another example of how the law is differently constituted for men and women despite the Constitutional provisions on equality. Under section 497 of the Indian Penal Code only the adultery committed by the man is considered an offence and under Section 198 of the Criminal Procedure Code 1973 only the husband of the woman who commits adultery can

prosecute her lover for adultery. On the other hand, if a married man commits adultery, his wife cannot prosecute his lover for adultery. In other words, only men can either prosecute or be prosecuted for adultery. In addition, under section 498 of the Indian Penal Code, "whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man or from any person having the care of her on behalf of that man with intent that she may have illicit intercourse with any person or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.". These sections have been challenged as violative of Article 15 of the Constitution, which states that there shall be no discrimination on the basis of sex alone. However, the Supreme Court has upheld the provisions on the basis of Article 15(3) of the Constitution, which permits positive discrimination in favour of women and children.

Although the law on adultery appears to be biased in favour of women in the sense that women cannot be prosecuted for adultery, it raises problematic issues and is not really favourable towards women. The reason why the female partner in an adulterous relationship is not punishable under the law is because the man is seen as the seducer and the woman as the passive victim. The offence is committed against the sanctity of the matrimonial home and it is the man who defiles the sanctity. The question also arises as to why adultery should be viewed as a criminal offence at all. (In most countries it is not a criminal offence). This goes back to the concept of the woman as the property of her husband. If, as stated in Section 498, a man "entices" away the wife of another man, he has violated the property rights of that man. Since, on the other hand, familial ideology and social perceptions do not view the husband as the property of the wife, (historically women could not own property at all) there is no question of adultery being viewed as a crime against the wife. This is why the wife cannot prosecute for adultery. Section 498 of the Indian Penal Code is an obnoxious provision, which totally repudiates the idea of equality of the sexes and of the woman as a free and independent agent.

The legal provisions pertaining to maintenance in the event of a marriage breaking up is another problematic area. The reason why it is necessary to pay maintenance to the wife is because of the reality of the economic dependence of the wife due to the sexual division of labour and not because 'woman is the weaker sex' as held by some courts. At the same time the amount of maintenance granted by the courts is usually grossly inadequate to her actual economic needs. In addition, if the woman has a sexual relationship with another man even years after the break-up of her marriage, the maintenance is not payable, irrespective of whether the man is

supporting her or not. This is true not only for most of the personal laws but also in the case of the Special Marriage Act. The law therefore reinforces both the familial ideology of dependency of the woman as well as the importance of her sexual good conduct and chastity even after the break-up of her marriage. No consideration is given to the work and contribution of the woman to the marriage or to her economic requirements.

Property rights are another instance of laws which clearly apply differently to men and women in all the personal laws. Even the Hindu Succession Act (1956) which does give equal inheritance rights to daughters and sons in the case of the father's property, does not give daughters coparcenary rights in joint family property. Only males are members of the joint family and joint family property devolves only through the male line from father to son. Daughters are considered to be 'transferred' to another family upon marriage and therefore not part of the joint family. It is true that some States have thereafter passed laws giving daughters rights to the coparcenary property. But enjoyment of the property rights conferred by the law on women, whether it be the father's own property or coparcenary property, is another matter.

What has been discussed till now are some of the laws, which are clearly unequal for men and women. There are however laws which seem to be gender neutral- that is the same for both men and women - but in reality are not so because of the different social and economic positions of men and women. One instance of such a law is that pertaining to marital property.

In all the personal laws husband and wife are considered to own the property to which they have a legal title. Each person will retain the property he or she had at the time of entering into the state of matrimony. In addition, the property acquired by each partner during the course of the marriage will be retained by that partner as his or her own property. There is thus no concept of joint ownership of marital property. On the break up of the marriage each person keeps his or her own property.

This law appears to be fair and gender neutral. In actual fact, however this concept of formal equality does not produce equal results. Most women do not inherit any property and hence own no property in their name. In addition, because of lower educational qualifications and the sexual division of labour, most women do not work outside their houses, or if they do, then it is in jobs with much less remuneration than those of their husbands. There are many families, which prevent even professionally qualified daughters-in-law from working outside the home. Even when the woman has a job, her salary is often handed over to the husband or in-laws to be spent on

household expenses and not utilised to purchase permanent assets in her name. The contribution of women as family labour in the agricultural holdings of the family or in family business is taken for granted and not paid for. Women are also not paid for their work within the house as cook, cleaner and carer.

Under the circumstances, if the marriage breaks up, the wife becomes destitute. The law regarding marital property, so apparently gender neutral, gives her no right to the marital home even if she had swept it and scrubbed it during all the years of her marriage or contributed towards its maintenance. Her contributions to the marriage are not taken into account and she has to take recourse to the long processes of law to obtain maintenance or alimony from her husband, which, as indicated earlier, is often grossly inadequate to meet the financial requirements of herself and her children. The outcome of the law is thus unequal and it is for this reason that women are often forced to continue in a humiliating or abusive marital relationship.

In a recent meeting, which the lawyer and activist Flavia Agnes had with judges of the Family Courts in Karnataka, she suggested that the law be amended to give women a share in the marital property on the breakdown of the marriage. This suggestion was resolutely opposed by all the male judges present, one of whom voiced the apprehension, which must have been in all their minds "How can you ensure good behaviour from wives if there is such a provision?" Others expressed anxiety that the number of divorces would increase if the wife were given a share in the marital property. In other words, the familial ideology of dutiful wife rested on the total economic dependency of the woman and the family was kept together only by the fact that she had nowhere else to go. Most of the judges present at the meeting evidently thought that this was a natural and desirable state of affairs.

The law regarding restitution of conjugal rights is another example of a law which appears to be gender neutral and tendering formal equality on men and women but which in implementation is a remedy through which a husband can literally enforce his property rights to his wife's company. The same remedy is not actually available to the wife because of her social and economic position.

In the past the remedy was exclusively available to men to ensure their control over their wives. When a wife refused to remain with her husband the husband could petition for the restitution of conjugal rights and if the wife refused to comply with the order she could be imprisoned. Women activists have long been agitating for the abolition of the remedy and the report of the Subcommittee on Women's Role in Planned Economy in 1940 recommended the

abolition of the remedy in both Hindu and Muslim personal law. However the Hindu Marriage Act (1955) instead of abolishing the remedy, made it equally applicable to both men and women. Despite the formal equality conferred by the law, familial ideology continues to inform court judgments and this makes the remedy an instrument of control over women.

The remedy is often used by husbands to obtain a decree of divorce in cases where the wife has left the marital home for some reason but is not anxious for a divorce. Other cases which have come up before the courts are those wherein the wife's place of work is at some distance from the place where the husband lives and he demands that she give up her job and reside with him. Even in cases such as that of Tirath Kaur vs Kirpal Singh where the wife had proved that she took up the job because of her husband's financial stringency, that she used to meet her husband during holidays and that she sent a portion of her salary to her husband and father in law in answer to their growing demands, the court allowed the husband's petition holding that "the husband was justified in asking the wife to live with him even if she had to give up service the husband was entitled to restitution claim" (AIR 1964, Punjab 28). On appeal to the High Court, the Court rejected the appeal: "A wife's first duty to her husband is to submit herself obediently to his authority, and to remain under his roof and protection. She is not, therefore, entitled to separate residence or maintenance, unless she proves that by reason or his maintenance she is compelled live apart from him." Similarly in Gaya Prasad vs Bhagwati the wife decided to work at a place away from the matrimonial home as a result of her husband's adverse financial circumstances (AIR 1966 Madhya Pradesh 212). She asked her husband to live with her but he refused and tried to coerce her to give up her job. The husband filed a petition for restitution of conjugal rights, which, though dismissed by the lower court, was allowed on appeal to the High Court, which held that "according to the ordinary notions of Hindu society, the wife is expected to perform the marital obligations at her husband residence."

In these and many other cases the court judgments do not seem to recognize the wife's right to work. In most cases, it was only when the wife could prove that she had left her husband's residence because of ill treatment that the husband's petition for restitution of conjugal rights was not allowed.

Although there are many other examples of how laws conferring formal equality are enforced or implemented to reinforce women's subordinate position in the family or to deny her real equality, the paper will indicate only one more - The Equal Remuneration Act, 1976 which provides for equal pay for equal or similar work. "Same work or work of similar nature" is

defined in the Act as "work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man and a woman". The Act also prohibits discrimination in the recruitment of workers as also discrimination in promotions, transfers and training.

Although the Act appears progressive, large differentials in the wages of men and women persist. The Act does not impose a duty on employers to evaluate whether the work of women and men is of a similar nature nor does it indicate the procedure by which such evaluation should be made. The enforcement is through individual complaints and is not institutionalised. Moreover, because of the sexual division of labour, men and women do not very often do the same work and women are concentrated in the low paying sectors. A differential value is attached to men's and women's work when they utilise different types of skills and this value judgment generally works against women, thereby defeating the purpose or the Act.

The paper has discussed in this chapter laws which; despite sections 14, 15 and 16 of the Constitution; are patently different for men and women and place women in a disadvantageous position. The chapter has also discussed laws which appear to be equal but which in application discriminate against women because their position is different from that of men. The question arises as to how the law should consider gender difference: should women be considered different from men and in need of protection, as assumed by the 19th century reformers; as the same as men with the same laws applicable to both sexes; or as the same as men as far as the right to equality is concerned but with the recognition that if equality is to be the end result of the legal and judicial process, then the law should be constructed and implemented with an understanding of women's position of disadvantage due to the past history of discrimination against her.

The question of considering women and men as different and unequal and applyin different laws to both sexes is no longer relevant. There is no possibility of setting back the clock and the personal laws concerning property rights and marriage which continue to discriminate against women will need to be amended. The concept of formal equality wherein the law, although formally equal, does not confer equal justice on men and women, has been discussed at length. Substantive equality is that which ensures justice and equality after a sensitive understanding of the actual position of both parties. It is in pursuance of substantive equality that article 15[3] of the Constitution provides for positive discrimination for women and children. There are several court judgments, which show the presiding officers' concern for substantive equality, which is where the interpretation of law was with the objective of securing justice and equal rights in letter and spirit.

Thus after such terrible court judgments in rape cases as that of Pratap Mishra vs State of Harayana, where the conviction of three men from the National Cadet Corps for raping a 23 year old pregnant woman was reversed (the victim miscarried 5 days after the rape) only because she was the second wife of her husband who had not yet legally divorced his first wife, we turn with relief to the judgment of Justice V.R. Krishna Iyer in Krishan Lal vs State of Haryana involving the rape of a minor where the court upheld the conviction of the accused (1980). The court rejected the argument that women lie about rape on the grounds that "in rape cases, courts must bear in mind human psychology and behaviour probability when assessing the testimonial potency of the victim's version. The inherent bashfulness, the innocent naiveté and the feminine tendency to conceal the outrage of masculine sexual aggression are factors which are relevant to improbablise the hypothesis of false implications." In State of Maharastra vs Chandraprakash Kevalchand Jain, the court has stated "Courts must also realize that ordinarily a woman, more so a young girl, will not stake her reputation by levelling a false charge concerning her chastity." (AIR 1990, Supreme Court 658).

The paper has discussed several cases where the courts have allowed the husband's petition for restitution of conjugal rights by insisting that it was the wife's duty to obey her husband and reside with him even if this meant that she give up her job or career to do so. Definitely such judgments are not imbued with the spirit of gender equality but rather seek to reinforce the traditional concept that woman's chief role is that of wife and mother. However the spirit of substantive equality is upheld in the order of the Supreme Court in Mayadevi vs State of Maharastra where the requirement that married women obtain their husbands' consent before applying for public employment was challenged as violating Articles 14, 15 and 16 of the Constitution. The Supreme Court held: "This is a matter purely personal between husband and wife. It is unthinkable that in social conditions presently prevalent a husband can prevent a wife from being independent economically just for his whim or caprice". In this case the Court has held that in order to achieve economic independence women must not be treated differently than men.

Similarly in a case against Air India, Lena Khan vs Union of India (1987), the Supreme Court held that the rule that airhostesses should retire at 35 was discriminatory and should not be allowed. The Court expressly rejected the argument that airhostesses should be ' young and attractive.'

It is seen from the above that court judgments are sometimes progressive and imbued with the spirit of substantive equality and sometimes are not. Unfortunately it is not true that once certain

liberal principles are established in judgments, those principles are thereafter followed in subsequent judgments. The ideology upon which the judgments are based does not follow established precedent; in fact no precedent is established and the view taken depends on the cultural values of individual judges. For instance several of the judgments in rape cases at the height of the campaign for amended rape laws were far more progressive, especially on the issue of consent, than the judgments following the passing of the amendments when the publicity attending the campaign had died down .The recent decision of the Supreme Court upholding the new law in Haryana that only those with not more than two children can contest in panchayat elections is certainly violative of the norms of substantive equality since the judgment shows a lack of understanding of the reality of women's lives and the fact that few women enjoy the right to decide the number of children they should have. Law is thus neither an agent of oppression nor an instrument of social change but an arena for conflicting ideologies. Substantive justice will be available for women only when women's groups are able tofollow up on individual cases and raise an outcry when such justice is denied. Continued public discussion of the ideology underlying such judgements will do much to sensitise the makers and interpreters of the law to women's rights.

The paper has discussed the concept of formal and substantive equality at some length as also how laws apply differently to men and women. These laws do not relate to social legislation. However the point is being made that the familial ideology which prevents women from obtaining equal justice in personal laws relating to property and marriage, in laws governing employment and remuneration, as well as in criminal cases stands in the way of the effective enforcement of social legislation. This will become more clear in the next chapter which will analyse the provisions and the enforcement of two selected enactments of social legislation - the Dowry Prohibition Act, 1961 and the Family Courts Act, 1984.

4. Dowry Prohibition Act And The Family Courts Act

4.1 The Dowry Prohibition Act 1961

Dowry has been the favourite whipping boy for all the ills, which beset women -from domestic violence leading to the murder and suicide of young brides to the unhappiness expressed at the birth of a bonny baby girl, from female foeticide to prevent girls from being born, to active discrimination against those who are born. The accepted credo is that it is because dowry has to be paid by the girl's parents to the boy's parents, as demanded by them at the time of her marriage, that the girl is considered a liability by her own parents, to be transferred as soon as possible to another household. It is because of dowry that as little money as possible is invested on the daughter's education and upbringing whereas the son is given privileged treatment because he not only remains with the natal family, but also brings money into the house at the time of his marriage. Dowry is also said to denote the perceived worthlessness of the girl so that gifts have to accompany her transfer to the bridegroom's family in order to make the transfer more acceptable. The fact that marriage is considered an absolute imperative for girls gives the bridegroom's family the leverage to demand more and more. The payment of large dowries also makes the girl's family reluctant to accept her back when she is ill treated in the marital home. On the other hand they are willing to give in to ever increasing demands from the husband's family in order to keep her in the husband's house at all costs. While the amount of dowry demanded does have some correlation with the academic qualifications or job of the boy, dowry is hardly the purchase of a husband; it is more like blood money paid into enemy hands.

There has been considerable academic discussion on the origin of dowry, whether it has been prescribed or proscribed by the shastras, whether it was an integral part of kanyadan and whether it is different from streedhan. It is generally accepted that streedhan means the wealth of the woman - the gold, jewellery, clothes and other property which belong to the bride and is hers to use whereas dowry is the wealth that goes with the women, that is, the wealth which does not belong to the woman but which accompanies her when she marries into her husband's family. The practice of giving dowry is closely linked to the concept of the daughter as 'paraya dhan', a commodity to be transferred from one family to another. This is at the root of the reluctance to permit daughters to inherit immovable property.

Even highly placed professionals who have no sons have been known to decide not to construct a house for themselves because the property will go to a daughter.

Women are thus placed in a position of dependency both in their own homes and in their marital homes.

The 19th century reformers did not raise the issue of dowry as a social evil to be legally banned. The women's organisations, which in the early decades of the 20th century, rallied around the demand of equal rights for women, also did not take up issues such as domestic violence, rape and dowry. This was perhaps because the women's movement which participated wholeheartedly in the struggle for independence, concentrated at that time on the nationalist agenda of securing the independence of the country and linked the dawn of a new era of democracy and equal rights for all with the vision of an independent India. However the misery caused to women by dowry has been tellingly portrayed in women's literature of the first three decades of the 20th century in the Hindi belt in north India. This concern is accompanied by sharp criticisms of the self-centred egotistic behaviour of men and attacks against male reformers for their failure to address and tackle the practice of dowry. An editorial in *Mahila Darpan* (March - April 1921) categorically mentions that the monstrous custom of dowry is the 'primary' cause for the rapid increase in polygamy, marriage of young girls to old men, and widowhood. The custom has so reduced women's status that many innocent girls are put to death at birth, and among those who grow up, many are married to old men married several times before and with numerous wives. The editor voices her opinion that if the custom of dowry were abolished then a considerable improvement would follow in other social ills besetting society. *Griha Lakshmi* and *Stree Darpan* are two other women's magazines of the time which were eloquent on the evils of dowry. These women writers have identified dowry as responsible for a larger vicious pattern characterised by the oppression of women in society.

It was at this time that the suicide of Snehalatha, a young girl from Bengal, who killed herself to save her family the anxiety of getting together a dowry for her marriage, created an outcry in the women's magazines. Snehalatha's letter to her father, written just before her death, was published in *Mahila Darpan* (March-April, 1921, p109) wherein she has written "I am unmarried even though I am fifteen years of age and I am taking my own life because people criticize and ridicule you for this is in spite or your making several attempts to resolve this issue".

The women's movement, which had campaigned for equal rights during the pre-independence struggle, saw those rights enshrined in the Constitution of the new nation. The struggle for equal rights in inheritance of property and in marriage and divorce laws faced a more uphill task; however some measure of success was achieved by 1955 when the Hindu Succession Act and

other pieces of legislation were enacted. It was only by this time that the women's movement began to give recognition to the gender inequalities built into the structure of society and family. The Government responded by the enactment of the Dowry Prohibition Act, 1961, a piece of legislation as full of holes as a colander and never meant to be taken seriously.

The Act laid down a very narrow definition of dowry as "property given in consideration of marriage and as a condition of the marriage taking place". This meant that money and other forms of wealth demanded and given after the marriage were not included in the definition of dowry. The definition also excluded presents in the form of cash, ornaments, clothes and other articles from its purview. Both giving and taking dowry was an offence under the Act. The offence was noncognizable and bailable - in other words, it was considered a trivial offence. The maximum punishment was only imprisonment for six months and/or a fine of Rs.5000/-. Complaints had to be filed within a year of the offence and only by the aggrieved party. The prior permission of the Government was required before prosecuting a husband who demanded dowry.

As a piece of toothless legislation the 1961 Act was unparalleled. Because or the difficulties involved, hardly any cases were filed under the Act and there were less than half a dozen convictions in the period between the enactment and the amendment. The judgment of the Bombay High Court in the Shankar Rao vs L.V. Jadhav case in 1983 is an example of the mechanical manner in which the law was interpreted. The Court held that a demand for Rs.50,000 from the girl's parents to send the couple abroad did not constitute a demand for dowry since the girl's parents had not agreed to pay the amount at the time of the marriage. It was not therefore a "consideration for marriage". The absurdity of the interpretation showed how easily the law could be circumvented.

In the meantime the custom of dowry spread to communities where it was hitherto unknown. The amount demanded also increased, as did new forms of demands on the girls' parents. Domestic violence increased but even when women, driven to desperation, approached the police for help the police would decline to intervene in "family quarrels" and send the women back, often after lecturing them about their duties. Even when the domestic violence women were subjected to ended in murder or suicide, there was reluctance on the part of the police to intervene in what was still seen as essentially a private matter. The National Crimes Record Bureau showed an increasing number of unnatural deaths of married women in all parts of the country but even this was only the tip of the iceberg as most of the deaths did not come to public or official notice but were closed at the initial stage as kitchen accidents (more than 80% of the deaths were due to

burning). Domestic violence is a complex issue and it is not only young women or brides who are subjected to it. However, all domestic violence was rather simplistically attributed to dowry. The murders and suicides of young brides brought to India the infamy both in national and international circles of a cultural crime peculiar to this country, known as 'dowry death' or 'bride burning'.

In the 1970s and 1980s violence became the central issue of the feminist movement. Wife battering and violence against women within the four walls of the house were for the first time brought out into the open.

The first protests against dowry in the contemporary feminist movement were made by Progressive Organisation of Women in Hyderabad in 1975. After two years the movement was taken up in Delhi, which witnessed the largest number of murders of young women for dowry. Such organisations as Stree Sangarsha and Mahila Dakshata Samithi organised mass campaigns for justice in the case of murders of young women by their husbands and in laws. Examples are the murders of Tarvinder Kaur, Kanchan Chopra, Bharati Narula, Shakuntala Arora, Hardeep Kaur and many others(Gandhi and Shah 1992). The campaign included the formation of neighbourhood groups, street plays, signature campaigns, mass protests in front of the houses of persons demanding dowry, posters, rallies and boycotts. The campaign attracted massive media attention and spread to other parts of India. The campaign witnessed a number of women's organisations coming together and was supported enthusiastically by members of the public who joined hands with the women activists to force the police to take cognisance of the crimes. Until this time women's death by fire had been put down as suicide and even these suicides were rarely seen as being due to dowry harassment. The police had never bothered to investigate them and had passed them off as private affairs of no concern to the State. For instance, Hardeep Kaur, a friend of the Tarvinder Kaur whose murder was one of the first, which the activists took up, had also been burnt to death by her in laws. Although she was an educated girl the police accepted a thumb impressioned statement purportedly written by her to show that she had committed suicide and allowed the culprits to go scot-free. Such calculated oversight by the police angered the women's groups. Their concerted campaign forced the police to reopen the case and ultimately to obtain an order of conviction against the in laws. Even dying declarations of the victims were completely ignored by the police, as in the case of Tarvinder Kaur, where she had declared that her mother in law and sister in law had set her on fire, despite which the police had closed the case as one of suicide. The campaign by the women activists' linked death by tire with dowry harassment, showing that many official 'suicides' were in fact murders.

The women's groups placed a memorandum before the Home Ministry demanding redressal. They demanded that dowry should be made an unbailable offence, that if the death of a girl occurred within the first seven years of marriage, post mortem must be compulsorily performed and that cases which appeared, as suicide should be fully investigated.

It was accepted by the Government that the glaring loopholes in the Dowry Prohibition Act, 1961 needed to be plugged. A private member's bill was introduced in Parliament by Pramila Dandavate, MP, to make amendments to the Dowry Prohibition Act, 1961. The bill was referred to the Joint Committee of both the Houses. The Committee suggested that the words "in consideration of marriage" ought to be totally deleted from the definition of dowry. The Committee also felt that presents given to the bride and bridegroom should be included in the definition of dowry. It recommended that gifts given to the bride should be listed and registered in her name. In case she died within the first five years of marriage the gift should revert to her parents. If she got divorced, the gifts should revert to her.

The bill, which was introduced in 1984, did not take cognisance of many of these recommendations. The most important amendments was that in the definition of dowry it substituted the words "in connection with marriage" for the words "as consideration for the marriage." It was felt that the simple omission of the words "as consideration of marriage" would make the definition too wide. The other important amendments were that the one year limitation period 'was removed and it was now possible for the girl's parents, relative or a social worker to file a complaint on her behalf. The requirement of prior sanction of the Government for prosecuting a husband who demands dowry was dropped and dowry was made into a cognizable offence. The punishment was also increased to imprisonment of five years and a line up to Rs.l0,000 or the amount of the dowry, which ever was more.

The Act was again amended in 1986 to make it more stringent. The fine was increased to Rs.15000. Dowry was made into a non-bailable offence. State Governments were requested to appoint Dowry Prohibition Officers.

Despite these improvements in the Act of 1961 several lacunae persist in the amended Act, creating difficulties in enforcement. The first is that of the definition of dowry itself. Despite the demands of women activists and the recommendations of the Joint Committee, the amendment retained the words "in connection with the marriage" in the definition of dowry. The trouble is that the context and the manner in which demands are made on the wife's parents and relatives by the husband and his parents have changed through the years and the existing definition of

dowry cannot cover all of them. The relatives of the wife are in a permanently weaker position and it is possible to make demands on them through out the life of the wife and not just before, during or immediately after the marriage. The birth of a child, the expansion of the husband's business, the construction or purchase of a house for the husband and his parents, the desire to study or work abroad voiced by the husband, the marriage of the husband's sister, the perceived need for better transport facilities for the husband - these are all occasions when the parents of the wife are pressurised to make contributions. The alternative would be harassment and ill-treatment of the wife or her return to her natal home, which was to be avoided as far as possible because of the social stigma involved.

Another problem with the amended Act is that both those who take dowry and those who give are penalized. This is a good example of formal equality conferred by the law, which renders the entire enactment useless because there is no understanding of the reality of the situation the law is attempting to improve. In the Indian context the parents of most girls expect to have to give some dowry at the time of the daughter's marriage. The amount they have to pay is determined by custom and usage and depends on their caste, financial position, financial position of the groom and his parents and other similar factors. The exact amount payable is decided after negotiations between the relatives on both sides, usually in the presence of the marriage broker. Traditionally nothing will be put into writing but the girl's father will be reconciled to paying this amount, which may be in the form of cash, property, gold, vehicle and clothes. Trouble usually arises only when the girl's father for some reason reneges on some part of the agreement or when the groom's parents make additional demands. At such a time it becomes difficult for the bride or her parents to give a police complaint against the groom's family because firstly, the demand for dowry would not be in writing and it will be difficult to obtain proof and secondly, the bride's parents may also get into trouble because they have already given some dowry. This clause in the Act also causes problems for the wife if, according to section 6 of the Act, she demands that the dowry be transferred to her name. She will find it difficult to benefit from the provision without getting her parents into trouble for having given the dowry in the first place. The women activists who had demanded amendment of the 1961 Act had urged that the givers of dowry should not be penalized but this recommendation was not accepted while enacting the amendment

Another serious problem is that the recommendation of the Committee with regard to the listing and registration of gifts given to the bride and groom is not part of the Act. The Act does net also place any ceiling on the value of the gifts although the proviso to sub section (2) lays

down that "where such presents are made by or on behalf of the bride or any person related to the bride, such presents should be of customary nature and the value thereof not excessive, having regard to the financial status of the person by whom or on whose behalf such presents are given". The subsection speaks only of those gifts given at the time of the wedding and does not cover gifts made subsequent to or before the marriage. The proviso regarding the value of the gifts "not being excessive" is very vaguely worded and left to subjective interpretation. This also makes it very difficult to distinguish between gifts, which are given voluntarily, and dowry which is given under compulsion. The Act does not ban conspicuously lavish weddings although it is the bridegroom's family which demands a "decent" wedding and the bride's family which pays for it.

The agitation of women's groups against dowry brought to the forefront the violence faced by women within their homes and the inaction of the police when confronted with complaints about such violence. It was recognized that although there are general provisions in the Indian Penal Code covering murder, abetment to suicide, causing hurt and wrongful confinement which could be applied to women facing domestic violence, these provisions were not helpful to women not only because of social and cultural mores which turned a blind eye on wife battering or other inequities and crimes committed within the family, but also because the evidence required by the courts to prove the offence "beyond all reasonable doubt" to secure convictions could not be easily available when the abuse took place within the home and in the heart of the family. The offence which is committed within the privacy of the home by a person on whom the woman is economically and emotionally dependent needs to be dealt with on a different plane. For this reason the Government amended the Indian Penal Code with sections 498 A and 304 B.

Section 498 A prescribes a penalty of imprisonment of three years for the husband or relative of the husband of a woman who subjects her to cruelty. Cruelty includes physical and mental cruelty, which is likely to drive the woman to suicide or cause grave injury to her life or limb. In addition, the definition of cruelty under this section includes the harassment of the woman in order to coerce her or her relative to meet with any unlawful demand for property.

Despite the fact that section 498 A is not limited to cases of domestic violence because or dowry demands, but covers all kinds of domestic violence, the attitude of most of the police has not changed and they are usually reluctant to intervene in cases of wife battering or where the wife is subjected to mental cruelty unless the complaint is linked to dowry. The result is that most women who take recourse to section 498 A combine genuine complaints of physical and mental cruelty with vague allegations of dowry which they are then unable to prove. It is also

true that a majority of the cases filed under this section are subsequently withdrawn, usually because of the exigencies of women's lives in India, where, without any rights in the matrimonial home and in the natal home in the event of the break up of the marriage, they have nowhere to go. Section 498 A does however help women by forcing men to the negotiating table and as a deterrent to bad behaviour. There has been some talk or abolishing section 498 A because of 'misuse' by women who make fake allegations against their husbands with regard to demanding dowry. This shows a total lack of understanding of the difficulties faced by women who are subjected to routine and persistent beatings or daily humiliations from which they can get no relief.

Section 304B of the Indian Penal Code introduces the word "dowry death" into the IPC and states that where a woman meets with a death otherwise than under normal circumstances within the first seven years of her marriage and it is shown that soon before her death she had been harassed by her husband or in laws with demands for dowry, then the husband and relatives shall be held to have caused her death.

This section does not help women much because usually no records are maintained or complaints made regarding dowry demands while the girl is alive. Despite the amendments to the Dowry Prohibition Act and the stringent punishment imposed for demanding and taking dowry and despite the amendments to the Indian Penal Code, the deaths of young women due to murder and suicide continue to rise. The National Crimes Record Bureau depicts these increases although many of the murders of young women by members of their family do not find a place in these records. Even for those few cases, which reach the courts, the conviction rates are less than 20%. Shoddy and unprofessional investigation by the police, corrupt doctors and public prosecutors, delay in the court, witnesses turning hostile are all contributory factors to the low conviction rate. Moreover there are many cases, which disclose a strong gender bias on the part of the judiciary even to the point of acquitting murderers and allowing them to go scot-free. A few of the more infamous examples are described.

In the case of Ashok Kumar vs State of Rajasthan [AIR (All India Reporters) 1990, Supreme Court 2134], the sessions judge decided to ignore the dying declaration of the victim, attested by a doctor, that she had been burnt by her brother in law. Instead he decided to acquit the accused on the flimsy ground that there was contradiction between the two doctors and that he doubted the testimony of the doctor who had attested the dying declaration because she was a woman. This verdict was reversed by the High Court and confirmed by the Supreme Court. Since murders

of young wives occur within the four walls of the home, it is not easy to get evidence. But even when there is evidence as the in this case, the dying declaration of the victim, repeatedly was discredited (Gonsalves L 1993).

In the case of Shobha Rani vs Madhulkar Reddy (1988), the husband and his parents harassed the young wife with demands of money. She approached the court for a divorce on grounds of cruelty. The trial court as well as the High Court held that there was nothing strange in a husband asking his rich wife for money when he needed it and dismissed the case. The young woman had to then approach the Supreme Court which, having examined the evidence, drew a distinction between asking a spouse for money and harassing a wife for money and granted the divorce on grounds of cruel. The case of Vibha Shukla shows how difficult it may be to get a conviction even under Section 498, A which was specially created to help women facing domestic violence. Vibha was found burnt to death while the husband Ashok Shukla was in the house (AIR, 1990, SC 2134). A huge dowry had been paid at the time of the wedding and there were several subsequent demands for dowry. Vibha was subjected to cruelty and harassment. When she delivered a daughter, her husband and his family did not accept the child, who was left behind in her parents' house. Despite all this evidence the Bombay High Court set aside the conviction of the sessions court and acquitted the husband of the charge of murder and harassment under section 498 A of the Indian Penal Code. The High Court held that occasional cruelty and harassment could not be construed as cruelty under section 498 A!

In several cases where the wife had clearly committed suicide because of domestic violence or dowry harassment, the husband was acquitted on the grounds that the girl committed suicide because of depression.

In many of these cases the blatantly biased acquittals by the High Courts were reversed by the Supreme Court. However in only a small proportion of the cases would the relatives of the murdered girl have the staying power or the resources to take the case to the Supreme Court. In many cases it was due to the adverse publicity given to the acquittal by women activists and their taking it to the Supreme Court that convictions were obtained.

There is however no doubt that despite the new laws crimes against women are on the increase. The practice of dowry has also spread and very few marriages are performed without demanding and taking dowry. A recent feature on NDTV showed how male IAS probationers in the Academy were being 'purchased' and how shamelessly they were breaking the law.

It is clear that the Dowry Prohibition Act, even after the enactment of the amendments, has been a colossal failure. The amendments to the Indian Penal Code and concomitant amendments to the Evidence Act and the Code of Criminal Procedure to treat the unnatural deaths of married women within the first seven years of marriage on a different plane, have not increased the conviction rates in the case of murders of young women or proved a deterrent to cruelty to the wife within the home. Women activists have now begun examining the phenomenon of dowry and domestic violence from a deeper sociological perspective. They suspect that, as the lawyer and activist Flavia Agnes puts it, the agitation against dowry is a "misplaced campaign". It is misplaced because the activists as well as the Government had not realized that dowry is only a symptom of a graver malady and that the practice of dowry cannot be rooted out without addressing the underlying causes. The efforts made so far through legislation to curb the practice of dowry have confused the symptom for the malady.

The real deep-rooted cause for domestic violence is not dowry but the unequal power relations within the family and the vulnerability of women. Women are subjected to cruelty in the home for a variety of reasons and not only for dowry. Women activists are now of the opinion that the distinction made between the dowry givers and dowry takers is artificial since both parties share the same cultural values and perceptions regarding women. Besides, the dowry givers of today are the dowry takers of tomorrow since most families have sons as well as daughters. The parents or daughters do not give them the same consideration that they give their sons indiscriminate against them not only in the inheritance of property but also in providing them with an equal education and helping them to stand on their own feel. In most cases the chief priority of parents is to get their daughters married off. In this anxiety to find a bridegroom they often do not take the trouble to asce11ain the antecedents of the boy or the details regarding his job. They are willing to pay dowry to the boys' parents and give in to all kinds of humiliating demands although it is illegal, in order that they take their daughters off their hands. Although it is natural to assume that men are equally desirous of being married, the great anxiety shown by Indian parents to get their daughters married places them in a supplicating, disadvantageous position as compared with that of the parents of the bridegroom. It is the arrogance that stems from the unequal power relations between the bride's and the groom's relatives that enabled the Delhi girl Nisha Sharma's would be mother in law to slap her father at the wedding ceremony when he protested against the escalated demands for dowry by the groom's parents (Dhavan R 2003). Indian parents not only wish to marry off their daughters somehow but try to ensure that they stay married at all costs. After having spent all the money on dowry in order to get their daughter married, they would not want her back in their house. The social stigma of having an unmarried or divorced daughter at

home would also affect the marriage chances of her younger sisters. Hence the parents of the young bride persuade her to adjust in her husband's house, at the cost of her self respect or even her life. It is to be remembered that the murders and suicides of young brides are presaged by many months of physical and mental torture. In many of the cases the girls have returned to their parents' home complaining of the trauma they were subjected to and have been sent back by their parents after some patch up was effected by the parents giving in to the additional demands of the groom. The girls' parents have thus literally sent them to their death.

The complaints of dowry are made by the girls' parents only after the girls are killed, when they complain to the police in order to get even and also to get back the dowry. Even after making the complaint they often compromise the matter when the grooms' families buy them off. There are also horrifying cases of the dead girl's parents marrying off a younger daughter to the same murderer! In any case the husbands of the dead women have no difficulty in marrying a second time with, of course, another dowry, as witness the notorious case of Sudha Goel where the husband who murdered her married again and had two children even while the court case against him was going on and before he was finally convicted and sentenced to life imprisonment [1984 (4), SCC 476].

The women's organizations began questioning the role of the girl's parents in driving her to death. They began to feel that the campaign against dowry was wrongly formulated because it did not link the issue of dowry with that of women's property rights in their parents' home. The reason for the continuance of the social evil of dowry was attributed to the powerless position of the woman both in her husband's home and in her parents' home. It was in this context that Madhu Kishwar wrote the article in Manushi "Rethinking Dowry Boycott" (1988) in which she argued that women's organisations had been barking up the wrong tree in campaigning for the banning of dowry and that in the absence of property rights for daughters, denying them dowry would render them even more vulnerable to violence and humiliation in their husbands' home. Banning dowry would be helpful only to the fathers and brothers of girls; it would not help the girls themselves.

There can be no doubt that dowry worsens the position of women since it is a coercive demands on the parents of daughters and is therefore to some extent responsible for the unequal treatment meted out from birth to girls by their parents. The women's organisations were right in demanding legislation prohibiting dowry. However they are also correct in pointing out that without addressing the fundamental issues relating to women's disempowerment merely passing laws prohibiting dowry will neither stop the practice of *'lena dena'* nor help women in the long run.

4.2 The Family Courts Act 1984.

Divorce was first recognized as a legal remedy in Hindu marriages in the Hindu Marriage Act, 1955. A more liberalised divorce policy was adopted through the amendment of 1976 which permitted divorce by mutual consent. The personal laws of other religions also permitted divorce under certain circumstances. By laying down the law regarding dissolution of marriage, divorce, conjugal rights, marital property and maintenance, the State entered the private sphere of the family. The application of these laws was done through the civil courts which meant that marital disputes were decided on the adversary principle with lawyers on both sides fighting it out in the open court and the case being tried along the strict rules of court procedure. This resulted in long drawn out and expensive legal battles between spouses. The huge pendency of all kinds of cases in the civil court contributed to painful delay in settling matrimonial disputes. For instance the case of Dastane vs Dastane (1975) took thirteen long years for a remedy to be denied. In Shanthi Nigam vs RC Nigam (Sita Mahalakshmi 1992) a petition for restitution of conjugal rights was decided after nine years and in Surendra Kumar vs Kamalesh even the question relating to jurisdiction was not decided for one and half years.

The outcome in a legal battle fought out on the adversary principle depends entirely on the cleverness of the lawyers on both sides. Women have much the worst or it in such a situation. They are the weaker partners in the marriage and in a much more disadvantaged position financially as compared with their husbands. They cannot afford expensive lawyers, (and the better the lawyer, the more expensive) or a long legal battle. With no property or job, or at best a lowly paid job, saddled with the children, facing social stigma, with no rights in either the natal home or in the marital home and after being for several years at the receiving end of an abusive relationship, they find it difficult to face the trauma of a prolonged legal tussle. Their husbands, on the other hand, can continue with their lives and often marry again even during the pendency of the case. The pronounced male bias evident in legal proceedings also render divorce or maintenance cases more painful and unjust for women.

During the eighties the women's movement began to demand for laws and procedures which would ensure women's economic rights within the marriage and make matrimonial litigations speedy, less expensive, less traumatic, and more just for women. They stressed that the unequal power relations between men and women within the institution of marriage should be recognized and new laws and procedures instituted which will eradicate the tyranny of dogma and preconceived notions of gender roles and tilt the balance in favour of women. Their argument

was that just as special courts, laws and procedures had been established to resolve labour disputes because of the unequal power balance between labour and management, a similar exercise had to be done to resolve matrimonial disputes because of the unequal power equations between men and women.

It was against this background and in recognition of the fact that conflict resolution was an important aspect of matrimonial disputes and that the formal atmosphere of the civil court was not the best place to settle such disputes that the government enacted The Family Courts Act, 1984.

The objective of the Act, as spelt out in the preamble, was to promote conciliation in, and speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith. A reference is also made to the demands of women's organisations as well as to the 59th report of the Law Commission which had stressed that in dealing with disputes concerning the family the court ought to adopt an approach radically different from that of ordinary civil proceedings and that it should make reasonable efforts at settlement before the commencement of the trial.

There is however one important area of difference between the demands of women's organisations and the provisions of the Family Court Act which was enacted in order to set up special courts to try matrimonial disputes, as urged by the women's organisations. The activists had demanded that the special courts should be set up in order to deliver gender justice in matrimonial conflicts since this is hard to obtain in the civil courts with their rigid rules of procedure and evidence. However in section 4 of the Family Courts Act dealing with the appointment of judges, it is indicated that while selecting persons for appointment as judges "every endeavour shall be made to ensure that persons committed to the need to protect and preserve the institution of marriage shall be selected." It has always been the argument of women activists that efforts to protect and preserve the institution of marriage is usually at the cost of the woman who is forced to "adjust" and accept humiliating, painful and unjust conditions in order to preserve the' family as a unit. As cogently put by Flavia Agnes in her "Critique of Family Courts" - "The institution of marriage and family can be preserved only at the cost of women - by denying women property rights and the right to divorce. All recent laws that are considered to be progressive and pro-women have been anti-family. For instance, the Dissolution of Muslim Marriages Act, 1939 and the Hindu Marriages Act, 1955, gave Muslim and Hindu women the right to divorce. In a traditional sense these laws could be viewed as being 'antifamily' The next

logical step was to move further in the same directions by making this right of divorce a practical and feasible reality rather than a nightmare by ensuring that divorce proceedings were speedy, devoid of anti-women biases and economically more fair and just to women. The aim had to be gender justice. The judiciary and the court officials had to be carefully selected or oriented towards achieving this end. But unfortunately, the Family Courts Act did not stipulate this. Instead, the Act was committed to preserving the institution of marriage and family."

The main provisions of the Act are as follows:

a) to make it obligatory for the State Governments to set up a Family Court in every city or town with a population exceeding one million.

b) to enable the State Governments to set up such courts in areas other than those specilled above.

c) to include within the jurisdiction of the Family Courts matters relating to (i) matrimonial relief, including nullity of marriage, judicial separation, restitution of conjugal rights or declaration as to the validity of a marriage or as to the matrimonial status of any person (ii) the property of the spouses or of either of them (iii) declaration as to the legitimacy of any person (iv) guardianship of a person or custody of a minor (v) maintenance, including proceedings under section 125 of the Code of Criminal Procedure, 1973.

d) to make it obligatory on the part of the Family Courts to endeavour, in the first instance, to effect reconciliation or a settlement between the parties to a family dispute.

e) to provide for the association of social welfare agencies and counsellors

f) to provide that the parties to a dispute before a Family Court shall not be entitled as of right to be represented by a legal practitioner. However the Court may, in the interest of justice, seek assistance of a legal expert as amicus curiae

g) to simplify the rules of evidence and procedure.

h) to provide for incamera proceedings at the request of either party or if the presiding officer thinks it is necessary.

i) to provide for only one right of appeal which shall be to the High Court.

The intention behind the Family Courts Act is thus to set up courts in informal settings away from the regular courts, where matrimonial disputes will be speedily disposed off by following simplified procedures, where the approach is conciliatory rather than adversarial so as to effect reconciliation where this is possible and where it is not, a quick divorce without acrimony and accompanied by a just settlement of issues such as maintenance, alimony and child custody. The presence of lawyers will be the exception rather than the rule and proceedings

are to be held incamera to make them less painful, particularly for the women. The presence of trained counsellors and social welfare agencies as well as the careful selection or sensitised and experienced judges will ensure substantive gender justice.

What does the reality check show?

According to section 3 of the Act there should be Family Courts established in every State in India. As against this only eighteen States have established Family Courts so far. In Karnataka there are at present nine Family Courts - three in Bangalore (as against~ a sanctioned four) and one each in Belgaum, Bijapur, Davangere, Raichur, Gulbarga and Mysore. Taking the population into account Bangalore should be having six Family Courts. A study of the Family Courts of Karnataka being conducted by the organisation Majlis on the request of the Karnataka State Government reveals that except for Bangalore there has not been much increase in the number of cases filed in the other Family Courts during the three years from 1999 to 2002 (Agnes F, 2003 (b)). In all the Family Courts except Bangalore the number of cases filed for maintenance is more than the number filed for divorce. In Bangalore, surprisingly, the number of divorce cases has increased considerably and is much more than the cases filed for maintenance. The study, which is not yet completed, does not disclose whether the majority of the divorce cases are filed by men or women.

The pendency is considerable - even in the case of the Raichur Family Court, where the number of cases filed is small and is decreasing, the pendency is 544 as against the average yearly disposal of 289.

The infrastructure provided for the Family Courts in Karnataka is by and large pitiable. The Raichur and Gulbarga Family Courts are housed in old buildings with not even the most basic amenities. The conditions in which the litigants are made to wait are inhuman. There is no shelter or toilets for the women who come from far off taluks and wait throughout the day in the scorching sun of these northern districts with their babies in their arms. The Mysore Family Court is very congested. There is no place for' the litigants to sit and most of them have to wait outside the court hall for lack of space. The registry is a part of the court corridor sectioned off with aluminium dividers. In Bangalore all the three Family Courts are situated in the City Civil Court complex and are scattered in different court rooms, on different floors, isolated from each other. The court registry is situated in yet another room on a different floor. The counselling rooms are also segregated from the court rooms and the registry. The litigants have a hard time locating the different court rooms, the registry and the counselling rooms which are scattered in

different parts of the large court complex. There is no difference between the courts labelled as Family Courts and the other regular civil and criminal courts. As in the other courts, the judge sits on an elevated dais and the lawyers sit round a horseshoe shaped table occupying the main body of the room. There is only one row of chairs at the back of the room for the litigants. However for most of the lawyers and the litigants there is only standing space inside the court room with the lawyers far outnumbering the litigants. Despite the express intention of the Family Courts Act that Family Courts should be situated at a distance from the regular courts so as to reinforce the informal image, the family Court rooms in Bangalore are situated in between the Civil and Criminal Courts which makes it convenient for the lawyers to flit from one court to another.

At a recent meeting of NGOs (non government organisations) and women lawyers held under the aegis of Women's Voice, an activist organisation based in Bangalore, there was strong criticism of the manner in which the court proceedings were conducted, with women litigants being subjected to vulgar and embarrassing questions and comments during cross examination in the crowded court room. Even the women lawyers representing them were not exempted from jibes and sexual innuendos. The proceedings are rarely held in camera, not withstanding the provision in the Act. The Majlis study reveals that in one of the Family Courts, when the presiding judge attempted to strictly follow the principle of 'incamera' hearing, the lawyers complained and forced the judge to hold the trial in the open court room. Most of the judges, in the meeting of Family Courts judges held by Flavia Agnes as part of the study being conducted by Majlis, confessed to being under considerable pressure from lawyers to 'conform'. One of the judges admitted that he was unable to move out of the totally unsuitable court premises into a new building because the lawyers were opposed to it on the ground that the new building was at some distance from the district courts and therefore inconvenient to them.

As in the case of the provision in the Act for 'in camera' proceedings, the provision whereby the litigants are not entitled, as of right, to be represented by lawyers, has been completely ignored in practice by the Family Courts of Karnataka. The judges treat the request for legal representation as a mere formality and never refuse it. They apprehend that if they refuse permission, the litigants will approach the High Court in appeal and obtain the required permission. (This has happened in one case where the High Court ruled that the refusal interfered with the right of employment of the lawyers). Hence refusal to permit lawyers to represent the litigants only results in delay.

Another provision in the Act, which according to the judges is responsible for causing delay in deciding cases, is that related to compulsory counselling. According to them counselling has

become a mere formality and is done in a mechanical manner which at best delays the commencement of the case and at worst is used by the husband to prevent the case from progressing, thereby helping to 'wear out' the woman who cannot afford a protracted legal battle.

No qualifications have been presented for counsellors. In some of the Family Courts the counselling is done by the lawyers (on the principle of 'I counsel your case, you counsel mine'). Counselling is thus purely ad hoc. There are no social welfare agencies to assist the presiding officer to ascertain the truth of various averments made by the litigants. None of the Family Courts in Karnataka is assisted by non commercial lawyers. Although the Act provides for the appointment of an amicus curiae to assist the Court, none of the Family Courts in Karnataka has an amicus curiae. Simplified procedures are not formulated for the Family Courts with the result that much delay is caused by taking down the evidence in the same detailed manner as in the other Courts and by following procedures which serve to complicate simple matters. For instance in order to withdraw maintenance amounts paid by the husband in the court, the wife has to make a formal application and submit a stamped voucher after which the amount is given to the woman in the form of a cheque. The woman requires the services of a lawyer for making the application and for identification. The procedure alone takes a minimum of fifteen days and it will be nearly a month before she can access the amount since the payment is through cheque. In fact, even this is being optimistic. A lawyer working for the Alternative Law Forum complained that her client had been unable to obtain the small amount paid in the Bangalore Family Court as maintenance even after seven months and repeated visits to the court since the clerk raised some objection or other obviously for the purpose of benefiting from the transaction. It would have been a simple enough matter to have the money paid into the woman's account in a bank on the premises of the court.

None of the Family Courts in Karnataka has prepared simple formats which could be easily filled up for straight forward cases such as applications for maintenance. There are no help desks provided to assist the litigants.

The Majlis study team has observed in their interim report that they had seen in the court room of the Principle Judge a woman who had come all the way from Kolar district, with a one month old infant in her arms. Every time the child cried, the lawyers glared at her and asked her to take the child out. She was feeling very selfconscious about this. Finally, when the matter was called out, her lawyer was not present and she felt totally lost. She could not answer any of the questions and was embarrassed as all the lawyers were watching her. Then she was sent for counselling. Two hours later the study team found her outside the counselling rooms with the wailing child, waiting for the counsellor to turn up. [Agnes F 2003(b)]

The Family Courts have failed miserably in their mandate of speedy disposal of cases. According to Jaya Siva, Bangalore Family Courts counsellor, the cases being tried in the Courts now are of 1995 - 96 vintage! Even simple maintenance cases takes more than two years to be finalized - one year being taken even for service of notice on the husband. This happens because of collusion of the process server with the husband or deliberate avoidance of service. The Family Courts judges stated at the meeting that about 30% of the maintenance cases are dismissed at the initial stage for want of service of notice.

According to Jaya Siva, even child custody cases take eight or nine years to be settled. The agony of uncertainty involved for the child as well as for the parents may well be imagined.

Much of the delay is attributed to the fact that lawyers have become as much a part of Family Court cases as of other court cases. The lawyers on both sides seek adjournments and prolong the litigation. They also obfuscate the issue and introduce further complications in the case by making additional applications for restitution of conjugal rights, child custody etc, thereby leading to multiple litigation. Alternatively the case gets dismissed for want of prosecution because the lawyers are interested only in filing the case and not in following it up seriously.

The case of Tanzeem, which gained some media publicity recently when the judge presiding over the Family Court threw a file at her in impatience at the absence of her lawyer, shows how terrible is the plight of a woman litigant in the Family Court. Tanzeem is the mother of two children whom she is supporting out of her meagre earnings of Rs.3000 per month. The case has been going on for three years with approximately ten adjournments every year. Tanzeem has paid Rs.200 to the lawyer for every day of attendance. Both her children have serious medical problems her daughter needs a heart operation which she cannot afford. Tanzeem takes leave from her job and attends every court hearing because of her anxiety about the outcome. Her husband never attends, has married again and carries on with his life. [Agnes 2003(b)]

Even after the Court gives its decree regarding maintenance or alimony, execution is another matter. If the husband does not honour the execution order delay is incurred by issuing him a show cause notice. He is also permitted very often by the Judge to make part payments, despite the difficulties this causes to the woman. Another problem is that unlike in Civil Court cases, the application for recovery of maintenance under section. 125 of the Code of Criminal Procedure has to be made within one year of the amount being due. This in effect means that for every year's default in payment the woman has to approach the court to file a fresh application for execution. It is therefore a usual practice for the husband to harass the wife by making her come again and again to the court, incurring fresh expenditure each time to file recovery petitions. Men also avoid payment of maintenance by taking voluntary retirement, disappearing - or even

going to jail! Employers also collude by not recovering the amount from the employees' salary.

At the meeting of Family Court judges, the judges were bitter about the fact that they were not given the same facilities as their counterparts in other Courts, (for example, they do not have the facility of an office car), that the staff was inadequate and that since they were all on deputation the judges did not have disciplinary powers over them and could not control them easily.

One more case is described briefly to illustrate how the cumbersome processes of the Family Court punish women.

The litigant is a young women of twenty five years with two small daughters aged four and two. She has not studied beyond Std VII. Her husband has died recently of AIDS and she has also been tested HIV positive, having undoubtedly got the disease from him. After her husband's death her father in law, a well to do man owning several bars and a shop, threw her and her children out of the house. She stayed in her parents' house for a year and in the meantime filed for maintenance and a share in the marital property. She also filed for an interim injunction to stay in the matrimonial home which was granted by the Court. The execution of the order took some time and in the meantime the father in law tried to delay the process or even derail it by applying for the initiation of conciliation proceedings. Finally the court order was executed to the extent of allowing the young woman to enter the house along with her children. But it was an empty victory the father in law, mother in law, brother in law and his wife retreated to the first floor of the house, locked up the kitchen, dug up the floor of the rooms on the ground floor and cut off the electricity and water supply to the ground floor! The girl and her babies are now staying in this frightening place with her father bringing her food once a day. And so the case goes on. [Agnes F, 2003(b)]

In Maharashtra and in one or two other States, agitations by women activists have resulted in some improvement in the working of Family Courts. However in Karnataka and in most other States callousness on the part of the official machinery and lack of interest in ensuring justice for women by enforcing the Act in letter and spirit has resulted in the Family Courts becoming yet another instrument in the oppression of women. In fact in some ways women may be worse off after the setting up of Family Courts. The fact that the formality of a request for engaging a lawyer and for going through a formal conciliation process, however mechanical, are mandatory according to the Act, provides reasons for delay which are not part of any other Court proceedings. The inferior facilities given to these relatively new Courts also contribute to their inefficiency. At the same time the Family Courts continue to adhere to the lengthy and time consuming processes and methods of recording evidence of the regular courts.

How can Family Courts be made more effective and fulfil their mandate? Any experienced

lawyer can suggest some of the remedies. For instance, one of the biggest problems has been evasion of notice by husbands in maintenance cases. This difficulty can be overcome if the court grants an ad interim maintenance amount to the wife -that is, all amount or maintenance is ordered to be paid by the husband to the wife pending hearing of the application for interim maintenance. This will, most probably, bring the husband running to the next hearing of the Court.

Similarly, there should be no need to issue a showcause notice to the husband if he fails to pay the maintenance amount. An execution decree should instead be issued immediately.

Much court time can be saved if the confirmation of notices and summons is done at the administration level by the Registry.

It is ridiculous and totally against the spirit of the Act to make the woman approach the Court for every year's default in payment. Once a recovery petition is tiled it should suffice for all subsequent recoveries. Section 125 of the Code of Criminal Procedure should be amended in this respect.

There are differing opinions on the need of lawyers in Family Courts. Most of the family court judges interviewed in the Majlis study were of the opinion that they are not required, that they have a vested interest in prolonging litigation and that they play mischief and sometimes cheat the clients. However many eminent lawyers, including Dr. Lotika Sarkar, feel that poor and illiterate or semiliterate people, particularly women, will not be in a position to know what is relevant and what is irrelevant and how best to present their case. Some kind of legal assistance is required. However for maintenance cases under section 125 of the Code of Criminal Procedure a simplified format and a help desk manned by paralegal persons will eliminate the need for a lawyer. Lawyers can therefore be banned in maintenance cases by an amendment of the Act.

A body of non commercial lawyers should be attached to the Family Courts to assist women litigants. They should be paid reasonable fees commensurate with those of other lawyers of Family Courts and the fees may be paid out of a Family Courts Fund to be created for the purpose.

Most of the proceedings, particularly those pertaining to divorce and child custody, should be held in camera. Two common accusations made against women in the Family Court are that they

are unfaithful (this is invariably made against working women) or that they are mentally unbalanced. It is difficult to defend oneself against either of these charges in the open court.

Counselling should be taken seriously. Trained counsellors with a Master's degree in Social Work and sufficient experience should be appointed. The Family Court judges as well as the counsellors should be given training in gender issues. The counsellors will also require training in family law. Counsellors should take care not to re-emphasise gender stereotypes or the familial ideology; they should strive for gender justice. While it is undoubtedly an excellent thing if conciliation efforts can set right misunderstandings, change behaviour patterns and bring harmony into relationships, counsellors should always keep in mind that a family should not be kept together at the cost of the woman. A family in which a woman has to put up with humiliation and ill treatment is not only a bad thing in itself, but also extremely harmful to the children. The counsellors should also remember that if the difficulties in the marriage were caused by demands for dowry in any form, then this is a zero tolerance zone and no compromise should be effected. Divorce proceedings should ensue in such cases as well as criminal action initiated against those who have broken the law.

NGOs and social welfare organisations of repute should be attached to each Family Court to assist the judge to ascertain the facts on the ground. For instance in the case previously mentioned of the young daughter in law and her children shut up in a house without food, water or electricity and with the floor torn up, it would be easy for an NGO to physically check the facts quickly and report them to the Court so that the Court could institute contempt of court proceedings against the father in law.

NGOs with paralegal training will also be helpful in giving advice regarding alternate options and in giving emotional support to women litigants. Since most girls in India are socialized into considering marriage as the ultimate objective of their life, the breakdown of the marriage shatters their self-esteem completely. The NGO can help them to feel confident and in control of their lives. A recent case in the Bangalore Family Court poignantly illustrates the need for such support

A young orphan girl married a Marwari businessman. The girl's uncle (her only relative) and the marriage broker had conducted the marriage negotiations. The day after the marriage her husband demanded a divorce on the ground that he had just discovered that his wife belonged to a different caste! The girl agreed to a divorce by mutual consent. She was alone in the Family Court - the uncle was nowhere to be seen. She did not ask for maintenance or alimony - obviously shocked by what had happened, she only wanted to return to her village. A supportive women's organisation attached to the Family Court would have been of great help to this young girl[1].

Family Courts should have good infrastructure so that women feel safe and comfortable. Clean toilets, comfortable waiting areas, provision of drinking water and subsidised canteens are minimum requirements. In order to make the Act effective, there should be Family Courts in every district with circuit courts for the taluks. Counselling centres with professionally trained counsellors should be set up in every taluk. These centres should also dispense literature on legal awareness regarding family law.

None of these suggestions is new. The flawed functioning of Family Courts has come under considerable criticism from women's groups for a long time. Vimochana had urged for changes in the Family Courts Act and at the instance of the Chief. Justice a workshop had been held on 2nd April 1991 in which policy makers; activist groups, the Legal Aid Board and legal experts had participated. The recommendations had been sent to the State Law department from where they did not re-emerge. Of particular interest is the section on non-payment of maintenance. The non-execution of the decree, obtained after such trauma from the Family Court, is the last cruel joke played on the woman. The last paragraph of the recommendations with regard to a social audit of the Family Courts to be conducted every two years is also to be taken note of since continuous monitoring of a high standard is the price of effective enforcement of any legislation.

In order to implement the Family Courts Act in the spirit in which it was conceived Government will have to invest money as well as effort. Every step must be taken in consonance with the avowed objective of gender justice - whether it is in reconciling differences and keeping the family together in a spirit if mutual respect or in facilitating a quick divorce under conditions of justice and fair play.

[1] Communication by Jaya Sivar, counsellor, Family Courts, Bangalore.

5. The Criminal Justice System

This chapter will examine how the criminal justice system in this country operates to ensure that those who cause hurt to the weak and the marginalised are apprehended and punished according to the law of the land. Although the focus is on domestic violence leading to the death of women, much of what is said here is applicable to violent crimes against other powerless groups or religious minorities.

Women's deaths by murder or suicide are in most cases caused by their husbands and in laws and take place within the marital home. Months or years of abominable mental and physical cruelty, often by not just one person but by all the persons in the house, usually presages the death of the woman. Wife battering is not only because of dowry. A woman may be beaten because the crying of the child disturbs the husband, because she has not borne sons, because she 'answers back', because the mother in law complains about her, because the husband has drunk too much or for any other reason. The real reason for wife beating is, of course, that the husband knows that he can get away with it because it is socially accepted that he has the unquestioned right to beat his wife. This belief is an article of faith with the police as well and it makes them reluctant to register the complaint or take action against the wife beater when a desperate woman approaches the police station with a complaint. The police, instead of doing their duty, often transgress their limits by advising the woman to return to her marital home and 'adjust' herself to the prevailing condition.

There are sections in the Indian Penal Code dealing with the several kinds of cruelties a woman may be subjected to in her home. Sections 299 and 300 deal with culpable homicide and murder. Sections 304-306 deal with punishment for culpable homicide not amounting to murder and abetment of suicide. Sections 312-318 deal with causing miscarriage and concealment of death by secret disposal of the dead body. Sections 319-324 deal with causing hurt, both grievous and otherwise, section 494 deals with bigamy, sections 309-358 with wrongful restraint, sections 383-389 with extortion and sections 403-405 with dishonest misappropriation of property and criminal breach of trust. It is not therefore for want of law that the police do not take action when the husband commits a crime against his wife under any of these sections but because of culturally induced value systems that hold that the woman is 'below the law' when it comes to what is euphemistically termed "family quarrels." Besides, the police may be wife beaters themselves.

Instead of tackling such prejudices, which have nullified legal provisions and made them

inoperative, the Government enacted new laws in 1986, which they hoped would be sufficient to deal with the problem of cruelty within the marriage. Section 498A of the Indian Penal Act reads as follows:

"Whoever, being the husband or the relative of the husband of a women, subjects such woman to cruelty, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

For the purposes of this section 'cruelty' means

a. any wilful conduct which is of such nature as is likely to drive the women to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
b. harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

The first part of the definition of cruelty in this section does not pertain only to dowry but refers to any physical or mental cruelty to which the woman may be subjected. The second part of the definition of cruelty does refer to harassment on account of dowry demands. Section 304 B is with regard to 'dowry death' the new phrase coined to describe the deaths of young brides caused by harassment for dowry.

Unfortunately the police mindset has not changed after the enactment of the two amendments. They do not usually take cognisance of the first part of section 498 A. The only offence in the relationship of husband and wife, which they are willing to recognize, is that of demanding dowry and harassment due to dowry. Hence it is only if there is a complaint made regarding dowry that the police swing into action. This is why, although the woman may have a genuine grievance under the first part of section 498 A, it is only when she adds, whether truly or falsely, that she is harassed under the second part of the section that any action is taken on her complaint.

Any new intervention or improvement sought to be made in this state of affairs becomes problematic because of the dominant ideology regarding family relationships. Thus Vimochana, an activist women's organisation in Bangalore, sought the establishment of women's helpline in the office of the Police Commissioner. The idea was that the helpline would swiftly respond to women's cries for help round the clock and whenever necessary carry out rescue operations to save women in situations where they apprehend danger to their lives. There had been a huge

response to an advertisement placed by Vimochana and an overwhelmingly large number of men and women of all ages and from different walks of life had volunteered to give free service to man the helpline. However when the helpline was established in the Police Commissioner's office, the police decided that another agency should operate the helpline and it soon became yet another counselling centre. There is a serious problem about establishing such counselling centres in Police Commissioner's offices and police stations. Women come to the police station only when they are desperate and as a last resort. If, instead of registering the complaint and taking swift action against the criminal, they are turned over to a counselling centre, that last hope is eroded. The counselling centres, whether those in the police stations or those outside established by the Central Social Welfare Board and other agencies, usually try to keep the family together and consider a case to have been successfully disposed off if, on the husband's promise of good behaviour, the wife is made to return to his house. There is no monitoring undertaken to verify the conditions of life for the woman thereafter. The most damning discovery about the helpline is that complaints received at the line or handled by the counselling centre are not even linked up as proof of spousal violence when unnatural deaths occur.

Section 154 of the Criminal Procedure Code describes in detail how a complaint should be dealt with in a police station. Under the law all information initially given regarding the commission of an offence has to be written down, read over to the complainant, signed by the complainant and entered in a case diary. A free copy of the document has also to be given to the complainant immediately. Everything hinges on this paper which is called the first information report or FIR. As described above, the police are slow to act according to the procedure laid down in section 154 when women make complaint of domestic violence. Under the circumstances the possibility of the police taking action when someone else reports the matter is almost nil although, since assault is cognizable crime, the police can take suo moto action. In fact, even when a woman is brought to the hospital after being grievously burnt, the police very often do not commence investigation until she dies of her injuries. This may take place several days or even weeks after the incident, by which time of course all evidence would have been destroyed and the witnesses primed.

The public hearings organised by Vimochana in Bangalore before the Joint Legislature Committee and before the Truth Commission in August 1999 where young women who had suffered marital violence and the parents of girls who had been murdered or had committed suicide testified in public laid bare for the first time the endless tales of shocking brutality which these women had to endure. They are perhaps worse~ than the tortures suffered by the prisoners

of concentration camps because many of them take place in the privacy of the bedroom. Burning with cigarette butts, gangrapc by the husband and his friends, rape by father in law and brother in law with the husband's approval, beatings and kicks bringing about miscarriage - these are just a few of the tortures inflicted on these girls.

In many case the panchayat or the parents of the girls had intervened. However the interventions did not help as long as the parents of the girl were reluctant to break up the marriage. The deaths of these women can be laid at the door of their parents and the law enforcing machinery for reluctance to enforce the law.

The paper will focus on the investigation and prosecution of murders and suicides of women in Bangalore following the path breaking work done by Vimochana in this city in 1999. However these findings are equally applicable elsewhere. Even in Kerala, where the demographic indicators with regard to women's status are significantly better than in other States, deaths of women due to domestic violence are on the increase. In the States of the north where all the parameters of governance as well as the status of women are much worse, the administration of the criminal justice system is also correspondingly degraded.

The first striking fact, which emerged from Vimochana's study, which initially covered the period 1997-98, is the large numbers of women who they found had been murdered or driven to suicide in Bangalore city alone during the period of study. The study revealed that over the two-year period, from January 1997 to December 1998, over 1425 unnatural deaths of women by murder or suicide had occurred in Bangalore. (The actual numbers may be much higher because of lapses in the data collection by the Crime Records Bureau. Vimochana has found several cases of burn victims who did not find a place in the official register of unnatural deaths). These were by knifing, strangulating, poisoning or burning. More than 70% of the deaths were by burning since this was the easiest way to destroy evidence. The disquieting fact was that the number of deaths which emerged ill Vimochana's study was much more than the number shown in the State police crime records. The cases listed by Vimochana were complete with the details of each case - the name of the police station, the crime number, the name or the victim and so on. Police authorities then agreed to get the two sets of data reconciled. Once this was done they admitted that their own figures were confined to some hundred odd cases of "dowry deaths" booked under sections 304 B and 498 A of the Indian Penal Code. Vimochana's list was much larger because they included cases, which the police had routinely classified and closed as accidents. The implications of the vast difference between police figures and their own then

dawned on Vimochana. The reopening of some of these cases by the police after the Vimochana study did in fact reveal that they were not accidents but suicides or murders.

It is necessary to understand how it is possible to murder young women in their own homes and to masquerade these crimes as accidents with such ease.

5.1 Preliminary investigation by the police

The law relating to the investigations of an unnatural death is given in sections 174 and 176 of the Criminal Procedure Code. When an unnatural death occurs (that is, a murder, suicide or accident) the station house officer (SHO) that is, the officer in charge of the police station, is expected to immediately record all information about the death and proceed to the scene of occurrence for preliminary investigation. He is also expected to make a preliminary entry about the section of the law applicable in the first information report. Initially the case is only entered as an unnatural death or murder under section 174. If the FIR is not subsequently modified after preliminary investigation then it can never be converted into an offence under the relevant section of law and action taken against the offender. The preliminary investigation is of the greatest importance because it is this which will decide whether the case will be closed as an accident or whether further investigation will be taken up because of registration of the case in the FIR as a murder or suicide. It is therefore essential that the preliminary investigation is done by a well trained and efficient officer. Very often the SHO does not take an active interest in the matter and a constable or head constable makes the crucial entries which ultimately determine whether the case will be treated as a murder, suicide or accident. There is almost no supervision of this very important function by any higher authority within the police or by independent agencies like the Human Rights Commission or Women's Commission (who only look at the police statistics of registered cases). The police constable who does the preliminary investigation has thus got unbridled powers which are often misused. This explains how about 700 burn cases of young wives were, during the period of the Vimochana study, closed as "stove burst" or 'kitchen accident' cases and were not included in the police records as murders or suicides. The parents of the victims who gave their testimony before the Joint Legislature Committee and before the Truth Commission described in graphic detail how their daughters had been tormented by their husbands and their families and how the police investigation had at best been casual and at worst a case of criminal collusion with the murderers.

The State Police Manual gives detailed instructions on how the police investigation is to be

done. Police officers are required to study the evidence from the scene of the crime - the bruises on the body, the materials found, the location of the body, whether doors and windows are closed or open and other material evidence. They are expected to photograph the corpse and the premises from different angles. They have to collect oral evidence which will throw light on the case and help them to determine whether it was a case of murder, suicide or accident.

It is a fact that police morale is at very low ebb. Most of their time is taken up in law and order and protocol duties. Detection and investigation of crime receives the lowest priority unless the crime is committed against a public figure. Domestic crimes - the murders of women within the home receives the least priority because of the difficulty in investigating such a crime due to the lack of witnesses, with all the members of the household involved in the crime in one way or the other, and because of the ease destroying evidence. Money power and influence also plays large part in closing many cases as accidents. The police may also be interested in closing such cases as accidents because the police crime records will show a decrease in the crime rate and the workload of the police will be less.

It was not only the testimony of the victims before the Truth Commission which revealed how shockingly bad police investigation is in the case of most of the heinous crimes committed against women. A glance at the connected files in any Tahsildar's office will corroborate this. Most police investigation at the all important preliminary stage is confined to a description of the corpse and a mechanical taking down of the statements or the husband, rather in law, mother in law, husband's siblings if they reside with him, the parents of the dead girl and her brothers and sisters. If the girl's parents state that they had not been harassed for dowry or that they were not aware of any harassment of their daughter for dowry, the case is usually closed without further investigation. The usual lament of the police is "If the parents of the girl have no complaint, what can we do?" However, it is the duty of the police during preliminary investigation **to find out the truth** irrespective of whether there is a complaint or not. There is no need for a complaint by anybody for the police to make a thorough investigation of a cognisable crime, such as an unnatural death in suspicious circumstances, Similarly, although the parents evidence regarding harassment would no doubt be helpful, the police can come to a conclusion regarding the cause of death from other evidence, both material and oral. This is what their training and the compulsions of duty as well as the requirement of justice demand.

In Karnataka the Tahsildar is the Executive Magistrate empowered by the State to conduct inquests. A copy of the record of the preliminary investigation into the unnatural deaths of young

women is retained in the Tahsildar's office. Even a cursory glance at these records will disclose the shockingly inept if not callously criminal manner in which the preliminary investigation is done. An example is the case of the death by drowning in a village in Karnataka of a young married girl within a few months of her marriage. She was said to have drowned while washing clothes on an embankment of the river. As usual the record of the investigation consists of the description of the body and the recording of the statements of her parents and siblings and those of her husband and husband's family- all in the same style, as though they were filling out a printed form. Nowhere in the papers is there any evidence recorded of whether the girl usually went to wash the clothes alone or with friends, as is usual in a village. None of the friends or the neighbours have been interrogated. The records do not disclose whether the investigating officer even visited the scene of occurrence and examined whether it was) in fact, possible for the girl to have fallen from the embankment and drowned. On the basis of the statements of the husband's family and because the girl's parents did not state there was a dowry problem, the case was closed without further ado as an 'accident'. In several cases the girls are said to have committed suicide because of stomach ache. The police do not seek corroborative evidence as to whether they had seen a doctor for the stomach ache and what the doctor's prognosis was. In many cases of death by burning, the incident occurs at two or three in the morning when it is impossible that any cooking is being done. Very often the police close the case as an 'accident due to stove burst' without even seizing the kerosene stove. I n some cases women' s organisation have shown that there was no kerosene stove on the premises and the cooking was habitually done on gas. At the time of the public hearings before the Truth Commission the parents of murdered girls have stated that the police had not even recorded the statements of eyewitnesses to the crime and the eyewitnesses confirmed this before the Commission.

The parents of the dead girl do not, very often, accuse the husband and his family of bad behaviour because the girl may have died so soon after her marriage that they, living in a distant village or in another State, may not be aware of their daughter's torments. Girls also try to spare their parents the details of their suffering for as long as possible either because of affection or because they hope that matters will improve after a while. The parents may also not complain of harassment by the son in law if he is related to them (as in the case of a girl marrying her maternal uncle or cousin) which is often the case. If the death occurs in a village, the husband's community often closes rank behind his family and the girl's parents, as strangers, feel threatened. Parents are also, shockingly enough, 'purchased' by their daughters' murderers on condition of silence. Perhaps the most important reason for the parents' reluctance to press the case is the wretched hopelessness to which they are reduced and their reluctance to get embroiled in the

painful ordeal of police investigation and the long processes of the court when they have little faith that the criminal justice system in this country which ultimately deliver justice to their daughter.

Another problem with police investigation is that the police are fixated on the second part of section 498A and on section 304B of the Indian Penal Code to the exclusion of all other sections in the case of violent crimes against women. In many cases they do not appear to realize that other sections of the Indian Penal Code such as those dealing with murder, culpable homicide, causing hurt and abetment of suicide can also be applied to crimes against women or that women, young and old, can be killed for reasons other than dowry. Hence if the evidence does not disclose that there was a problem regarding dowry the police are apt to exonerate the husband and close the case as one of suicide or accident.

A story narrated by the Deputy Director, Women and Child Development Department, Chikmagallur at a recent meeting of Deputy Directors of that department illustrates this point. He stated that a member of a Stree Shakti group, (a self help group of women promoted by the Karnataka Government) who was a young girl of eighteen, had married a man from another village. She was a bright girl who had undergone several rounds of training on women's 'empowerment' and had won prizes at taluk level debates on dowry. She protested against the marriage when her parents gave dowry to the groom's people according to custom, but to no avail. Within a few days of the marriage and before the marriage pandal was taken down in her house, the girl was dead. Her husband and his family stated that she had committed suicide because of 'depression' and because of pressure from them and from the villagers, the police accepted this version of the story and were ready to close the case. However, representations from the Stree Shakti group to the Deputy Commissioner and the Deputy Director, Women and Child Development, disclosed that the girl had been raped by her father in law and murdered, perhaps because she refused to be silent about the violation. The case has since been re opened.

The Government has, in an effort to improve the investigation into "dowry deaths" issued orders that these deaths should, in Bangalore, be investigated by an Assistant Commissioner of Police and in the districts should be entrusted to a special cell set up in the Corps of Detectives. In practice however the Assistant Commissioner of Police is too busy with other routine duties to do more than generally supervise the investigation. The special cell in the COD is also not superior to the rest of the investigative apparatus and very often does not get the co-operation of the local police. Moreover and this seems to have been over looked while issuing these orders, the Assistant Commissioner of Police and the Corps of Detectives will enter into the picture only **after** the preliminary investigation is over and only **if,** after the preliminary investigation, the FIR is filed citing relevant sections of the law to show- that a cognizable offence has been committed. If, on the other hand, the preliminary investigation is done at a lower level in the

unprofessional, criminally negligent manner described above, the cases will be closed at that stage and neither the Assistant Commissioner of Police nor the Corps of Detectives will enter the picture. They do not even supervise or monitor the preliminary investigation. This explains the large discrepancy between the number of murders and suicides of women recorded in the study of Vimochana and the number indicated in the police records.

5.2 Dying Declaration

In the absence of other witnesses, conclusive proof can be sought from the victim herself, if she lives long enough to give her evidence. Criminal jurisprudence is built around the fact that a dying person is most likely to tell the truth. The dying declaration of the victim - most often a burn victim - has therefore much value as evidence in the court of law. Detailed instructions have been laid down in manuals as well as in case laws as to how dying declarations are to be recorded. The declaration should be voluntary, the dying person should be in a fit state to give the statement and it should be signed by her. The police have to record that the declaration is voluntary and the doctor has to certify that she is fit to give it. However the terrible truth about women dying of domestic violence is that they very often exonerate their murderers even on their deathbeds. This is usually because of fear for their little children, left behind in the husband's family, or for their old parents. Sometimes, unaware that they are going to die, they exonerate their husbands because of the fear that they will have to return to the same household. Later, when they realize that they are going to die, they give another statement accusing the husband and his family of killing them. However judges, unaware of the realities of the situation, often do not accept the second declaration as evidence. It is the sad fact of domestic violence ending in murder, where it is so hard to obtain evidence, that even the evidence of the victim herself often helps to exonerate the criminal, not to punish him.

Besides this, there are many cases where all the provision regarding recording of the dying declaration are deliberately violated by corrupt police officials and doctors to help the murderers. The declaration is often not voluntary but obtained under coercion. The dying woman is threatened that her children will be harmed or that a case of attempted suicide will be foisted on her if she does not put her thumb impression to the statement exonerating her husband and in laws. Sometimes the thumb impression is taken on a blank piece of paper or from a dead or comatose body. Instead of allowing the victim privacy while recording the dying declaration she is surrounded by hostile and threatening members of her husband's family and by policemen in uniform. In this manner the dying declaration is very often used not to convict the criminal but concocted to acquit him.

5.3 Medical evidence and post-mortem

Forensic and medical evidence can provide valuable insights into the cause of death, particularly in the case of death due to domestic violence when murders are so often camouflaged so as to appear like accidents or suicides. Vimochana has held meetings with leading forensic and medical experts who have demonstrated the best techniques for establishing whether the injuries are accidental, self inflicted or otherwise. It is important that medical and forensic evidence must be gathered immediately after the body is discovered. Unfortunately this is never done.

Under the law medical evidence must be produced to determine the cause of death when an unnatural death occurs. The Code of Criminal Procedure was amended in 1983 to make post-mortem mandatory in cases where a woman has committed suicide within seven years of her marriage or where the woman has died within seven years of marriage and a relative of the woman makes a request for post-mortem or there is reasonable suspicion that some person had committed an offence in relation to the woman. There are detailed procedures laid down in medical and police manuals as to how post-mortems are to be done. Unfortunately these are often ignored in practice. The police often delay in sending bodies for post-mortem. Post-mortems are only done in Government institutions because private hospitals refuse to do them. The facilities in most of the' Government hospitals with regard to transport of bodies, storage in mortuaries and conducting the post-mortems are primitive. For instance many taluk hospitals do not even have mortuaries. The doctors delay in conducting the post-mortem and in sending the reports. Sometimes the post-mortem reports are received by the police after several months.

There is a general disinclination among doctors to do post-mortems because it is an unpleasant task with potential for prolonged legal harassment through court appearances. For these reasons, doctors often get post-mortems done through untrained lower functionaries.

The post-mortem reports are often perfunctory and do not clearly indicate the cause of death. Vimochana has seen several cases where there were major differences in the record of injuries maintained by the police, by executive magistrates and by medical officers. Such discrepancies are exploited to secure the acquittal of the accused when the case comes up for trial. Unfortunately post-mortems are not supervised or culpable medical officers punished in these cases.

5.4 Inquest

Existing criminal procedure does take note of the need for external monitoring of police investigation, particularly in cases relating to deaths in police custody or when it relates to the suicide of a woman within seven years of marriage or the death of a woman within seven years of marriage under suspicious circumstances or when a relative of a woman dying within seven years of marriage makes a request in this behalf. The external monitoring is done by holding an independent inquest by the Executive Magistrate. The sole purpose of the inquest is to ascertain the cause of death. Section 176 of the Code of Criminal Procedure describes the powers of the Magistrate while holding the inquest. He has all the powers which he would have in holding an enquiry into an offence and can summon witnesses and record evidence.

The inquest, if done properly, could be a check on the preliminary investigation done by the police. Unfortunately the Government of Karnataka, and probably most other State Governments, have not notified rules for sections 174 and 176 of the Code of Criminal Procedure to give detailed guidelines regarding the manner in which the Executive Magistrates are to hold inquest. The result is that the Executive Magistrates, who consider inquests as unpleasant additions to their normal duties, simply follow the lead of the police and sign on the dotted line. There is absolutely no independent enquiry or monitoring by the Executive Magistrate.

The procedure followed at present in Karnataka is as follows: As soon as the officer in charge of a police station is informed of an unnatural death occurring within his jurisdiction, he informs the Executive Magistrate (normally the Tahsildar). In the case of unnatural deaths of young married women, the Magistrate proceeds to the place where the body is lying and examines it, recording in the statement the injuries on the body. There is often some delay in doing this because the Magistrate may not be available since he is an officer of the revenue department and has many other duties. He is also a touring officer and may not be available in head quarters. The police justifiably complain that the non availability of the Executive Magistrate delays the holding of the inquest and sending the body for post-mortem.

The Executive Magistrate is unused to police procedures and out of his element while conducting the inquest. Besides this, examination of a dead body, and that too of a young woman, for marks of injuries is an acutely painful and embarrassing exercise for him. He will therefore most often merely put his signature to the statement already prepared by the police after

examination of the corpse. The examination of the witnesses by the Executive Magistrate is also done in a perfunctory manner by recording the statements of the dead woman's parents and siblings and those of the husbands and his parents in exactly the same manner in which the police have done in their preliminary investigation. In fact the statements are very often exactly the same, word for word, being nothing but copies of each other. A sketchy report is then prepared (often by the police) and signed by the Executive Magistrate.

In the absence of guidelines and training the Executive Magistrate is totally at sea and the inquest provides no mechanism for external monitoring of the preliminary investigation to enquire into the cause of death. In addition, Executive Magistrates are as corrupt as the police and the medical officers and as likely to collude to protect the guilty. A national newspaper had reported in October 2003 about the strictures passed by the High Court of Karnataka against a Tahsildar for refusing to record the dying declaration of a woman and thus helping to secure the acquittal of her murderers.

5.5 Judicial process

In the small proportion of cases where the police succeed in filing a charge sheet, the case will normally take seven or eight years for conclusion of the trial. The conviction rate is abysmally low at about 29%. The reasons are manifold and vary from poor quality of investigation to witnesses turning hostile. The long delay in the court allows ample time for extraneous influences to play on the witnesses both in the form of blandishments and threats. The feelings of shock and righteous indignation are bound to wane in eight years, rendering the witnesses susceptible. Moreover, they may genuinely forget the details of what they saw or heard, giving room for a clever defense lawyer to pick holes in their evidence. It is the duty of the public prosecutor to prepare the witnesses in advance just before the trial and go through their statements with them, but he is often remiss in doing this, with catastrophic results (The public prosecutors blame the police for not bringing in the witnesses well in time for the prosecutors to help them to refresh their memories.) In addition the public prosecutors are often no match for defence lawyers, not being equally motivated and burdened with a plethora of different types of cases.

The paper has attempted to depict how the Government, in recognition of the fact that women are often subjected to abuse and cruelty in the marital home, sometimes resulting in their death, that the number of such deaths are on the increase everywhere and are often not even part of the official police records, has amended the Indian Penal Code, the Code of Criminal Procedure and the Evidence Act to ensure that domestic violence is recognized as a crime and to improve the

investigation into the deaths of women due to domestic violence. However, twenty years after these amendments, it is as easy as ever for a family to murder its women with impunity and the number of such crimes continues to increase, as admitted by the police themselves. As explained above, lack of concern or understanding of the serious lacunae in police investigation and inquest, absence of monitoring or accountability, lack of attention to detail, insufficient budgetary and administrative support for more scientific investigation by the police, criminal negligence, corruption and criminal collusion by all concerned, as well as public apathy, have ensured that the law is rendered ineffective.

What is the remedy?

5.6 Recommendations for change

Improvement of police attitudes and methods is essential for effective punishment of brutal spouses and their families. The following measures should be taken with regard to police investigation:

1) A responsible senior officer should be entrusted with the preliminary investigation which will determine the section under which the unnatural death is classified - whether as an accident, suicide or murder.
2) The power to take cognisance of an offence must be actively exercised by the police whenever there is incontrovertible physical proof of violence.
3) A forensic and medical team should accompany the police officer to the scene of occurrence in order to help him to do a quick and scientific preliminary investigation according to the provisions in the Police Manual. Evidence from the scene of crime as well as oral evidence should be collected with the objective of arriving at the truth, irrespective of whether the parents of the victim complain about harassment or not. The preliminary investigation should be videotaped

.4) The police should adopt appropriate behaviour to encourage witnesses and victims to testify courageously.

5) The procedure prescribed for recording dying declarations should be followed scrupulously. The recording should be done in private, in a calm atmosphere and after reassuring the victim, after obtaining the certificate regarding fitness from the doctor and after removing all interested parties from the scene.

6) Monitoring and review must be based on the unnatural deaths of women and not just dowry deaths. The monitoring should be done for the preliminary investigation, inquest

proceedings, and classification of the death, further investigation and charge sheeting. The progress in the court should also be monitored. The investigating officer, the Executive Magistrate, the doctor performing the post-mortem and the public prosecutor should all be made accountable for lapses.

7) The inquest procedure requires to be radically changed. The mistake has been in the present procedure of conducting the inquest alongside the police investigation at the scene of crime. Inexperience and poor knowledge of investigative techniques have made Executive Magistrates ineffective in countering the conclusions drawn by the police from the examination of the dead bodies. The inquest as conducted at present has only served as a nuisance factor to delay the conduct of the post-mortem. The remedy would be to conduct the inquest, not along with the preliminary police investigation, but as a separate quasi-judicial enquiry in an open court, as near the scene of occurrence of the incident as possible, one week after information regarding the death is received. The preliminary investigation report of the police and the post-mortem report will be placed before the Magistrate in the open court as part of the inquest proceedings. The Magistrate can examine the police officer and the doctor who conducted the post-mortem. He can also summon and examine other witnesses if he feels they can throw light on the case. AI time limit of one or two days should be fixed for completing the inquest and pronouncing the findings in the open court. After weighing all the evidence the Magistrate conducting the inquest will give his considered finding as to whether the death was due to murder, suicide or accident.

Further police action should be taken only on the basis of the findings of the inquest.

There are several obvious advantages in following this revised procedure for the inquest. The unlimited discretion enjoyed by the police at the junior most levels today to cover up cases of domestic violence will be removed. All unnatural deaths of women can be monitored at one forum since no case can be summarily filed away by the police without a magisterial order. The inquest becomes an occasion for an external agency and the public to assess whether an investigation (including medical and forensic examination) has been thoroughly done and all relevant witnesses examined. It also ensures that the post-mortem is done on time and the report submitted since the post-mortem report is examined at the time of the inquest. Since the proceedings are held in the open court members of the public and the media will be able to assess whether the various functionaries have done their work properly. It also ensures that major reports become part of the public record; copies or the first information reports, post-

mortem reports and the inquest report itself can he obtained by any person from the Executive Magistrate's office itself. This will introduce much required transparency into the proceedings and will be a major achievement since the study by Vimochana has shown the difficulty faced by the victim's family in having access to crucial papers as well as information about the progress in police investigation.

The inquest proceedings should be subject to judicial review. This as well as public vigilance is required to ensure that the inquests are conducted properly.

All these changes in the inquest procedure do not require statutory amendments since one of them contravene the legal provisions already existing. They can be covered by the rules under sections 174 and 176 of the Code of Criminal Procedure which the State Governments are competent to frame. The Karnataka State Government is in fact expected shortly to notify the rules on the lines indicated above.

8) Once the rules are framed for sections 174 and 176 of the Code of Criminal Procedure, intensive and continuous training of police officers and Executive Magistrates should be made mandatory.

9) Post-mortems should be videotaped to ensure greater transparency and accountability.

10) A delay of seven or eight years in the court is an intolerable burden on the parents of the dead girl. A large number of fast track courts may be one answer to the problem. The public prosecutor should be held accountable for the proper preparation and presentation of the case. Witnesses turning hostile are an ever-present problem in Indian courts and a number of solutions are suggested, including taking cognisance of statements made before the police and witness protection measures. One solution may be taking into cognisance the statements made by witnesses in the inquest, the fact that it is held in an open court would preclude any possibility of coercion. The other suggestion is that it may be worth considering a change from the adversarial prosecution methods we have inherited from the British to the French criminal jurisprudence system. In the British system the State is pitted against the alleged criminal and the judge is not expected to seek the truth but to treat both parties on an equal footing and evaluate their evidence and arguments objectively. The case for the prosecution is often deliberately lost by presenting inadequate and contradictory evidence, suppressing crucial testimony and through indifferent arguments. As a consequence criminals (especially those who can afford expensive legal support) escape unscathed. In the French system the judge plays a more active role; he is

not a mere arbitrator between two opposing parties but a seeker of the truth. He can ask questions, call witnesses, demand the collection of fresh evidence and do all he can to ascertain the truth. In India disadvantaged groups like women may have a greater chance of securing justice if the French system is adopted. However there is always the danger that a judge with such unbridled powers may misuse them. Judges also should be made accountable.

11) In the final analysis it is the role played by public bodies, citizen's groups and voluntary agencies, which can ensure effective administration of justice. While strong campaigning by activists does help, sustained results are possible only if the system itself provides a legitimate role to these bodies so that they can have a continuous catalytic and monitoring role.

There are several areas in which voluntarily agencies and committed citizens can be integrated into the system.

i. they can be provided a 'help desk' in police stations so that they can advice complainants who visit police stations or their rights as well as of police procedures.
ii. they can accompany the police - medical officer - forensic expert -investigating team at the time of the preliminary investigation and ensure that preliminary enquiries are done properly.
iii. they can work closely with legal aid and services authorities to create awareness and provide additional support to victims and their families
iv. they can serve on monitoring committees set up within the Government to review progress in prosecuting and convicting cases of domestic violence
v. they can be given financial support, wherever required, in setting up neighbourhood groups to prevent domestic violence.
vi. they can monitor what happens to the victims of domestic abuse who on the advice of counselling centres, return to their husbands' house.

12. There are one lakh women's self help groups in Karnataka. Most other States also have a large number of women's self help groups. These groups should be encouraged to discuss issues such as domestic violence and atrocities against women. They should be instructed on the legal position with regard to these matters and encouraged to evolve strategies to counter such atrocities. A network of strong women and vigilant citizens will best protect

women against violence and help to bring the criminals to justice if atrocities take place.

The criminal justice system in our country is in bad shape and needs to be overhauled. In addition to the difficulties already described, some of the principles of criminal law in this country make it difficult for the State to secure a conviction. The system bends over backwards in protecting the rights of the accused. Even the faintest possibility of the infringement of any of these rights sends the defence lawyer running in appeal to the High Court, which results in further delay in deciding the cases in the lower court. Three principles of our judicial system in particular protect the accused in a criminal case: (1) the accused is presumed to be innocent till his guilt is proved (2) proof beyond reasonable doubt is required and (3) the accused enjoys the right to silence or total denial. The burden is therefore entirely on the State to prove the case against the accused. In the European system the accused has to disclose his defence at the earliest possible time and does not have the right to silence.

While our criminal justice system protects the rights of the accused assiduously, the victim has few rights. The defence lawyer is permitted by the court to ask the victim irrelevant and offensive questions with intention to harass and humiliate her and to delay the proceedings. Rape victims, in particular, undergo a trauma almost as bad as the rape itself by being forced to suffer brutal cross examination, often with aspersions on their sexual conduct and character. The delay caused by frequent adjournments on the request of the defence lawyer is also a denial of justice to the victim.

Certain pragmatic steps can be taken, as in other countries, to reduce delay in the court. A pre-trial conference of the judge, the prosecution and the defence is one of them. Here differences may be narrowed down so that the trial will be confined to what is disputed by the defence.

Witnesses turning hostile are a major problem in our system. In about 80% of the criminal cases witnesses turn hostile, making it difficult for the prosecution to prove the case, Witnesses rarely turn hostile in the European criminal justice system. A Witness Protection Act should be enacted and enforced. Statements before the police should be signed by the witness. In case of heinous crimes the statement given before the police may be videographed. If witnesses turn hostile, action should be initiated for perjury by amending section 340 of the Code of Criminal Procedure.

The Government has to give more attention to effective and scientific investigation into crimes. A four-tier structure of forensic experts should be established at police station level, district level, range level and State level. DNA centres should be established at State and district

levels. Most important, each police station should be tagged on to a Crime Response Team as in the United States, so that forensic experts are on the scene of occurrence right from the preliminary investigation stage. Police officers should be specially trained in criminology and in detection and investigation of crimes.

The entire investigation and prosecution apparatus should work together to bring the criminal to justice. At present each is only interested in blaming the other for the failure to obtain conviction of the accused. There should be continuous interaction between them and joint monitoring of cases in order to learn from mistakes and prevent then in future.

It is not only the law and court practices which protect the criminal; the corruption that prevails in every branch of public service and in all sections of society is the greatest obstacle to securing justice for the marginalised and powerless. The post of court constable is a sought after post because money can be made by masquerading the wrong persons as witnesses and by doing other mischief. However, as explained, earlier corruption as well as buckling under undue influence are to be seen in every stage of the investigation and court processes - the police, the medical officers, the executive magistrates, the court clerks and the public prosecutors. If even one of these agencies is corrupt or does not work with sincerity the case will fall through. It is therefore not really surprising that the conviction rate is so poor. The fact that the conviction rate in India is less than 30%, whereas it is more than 80% in European countries is sufficient indictment of the criminal justice system in this country.

It is the first duty of the State to protect its citizens - especially those who cannot take up cudgels on their own behalf. There can be no real equality or enjoyment of rights unless there is freedom from fear and faith in the State apparatus for keeping and enforcing the law and ensuring justice. The State has to keep its promise under the social contract. It is not the intention of this paper to go into a long discussion of how the criminal justice system should be improved in order to protect human rights. This has been sufficiently discussed in other places and excellent recommendations made by the National Police Commission, the Rebeiro Report and various Law Commission Reports, particularly those of 14, 40, 41 and 154. The Malimath Report (2003) is the most recent in this connection. The Government, both at the Centre and the State, has to now with strength of will and purpose, implement these recommendations. It has to invest thought, energy and money in reforming the investigative and judicial machinery so as to ensure that crimes are not committed against the disadvantaged with impunity.

6. Why Is Social Legislation Not Being Enforced?

After a century and a half of fighting for legal enactments for the protection of women and for granting them equal rights, many women's rights activists have become disillusioned with the ability of the law to ensure the enjoyment of those rights by women. The law, they feel, is too rigid to understand the complexities of women's lives. The process of litigation is long, expensive, complicated and oppressive for women emotionally, physically and financially. Even after obtaining a decree, the execution of the same is another long and traumatic process. Justice for women under the criminal justice system is also almost impossible to secure. In addition, there is no protection for women, who face harassment or the threat of violence in the workplace, school or college, street, public transport, place of entertainment or in the home.

Many women activists are therefore turning to alternative justice delivery systems such as the nyaya panchayats or mahila adalats to resolve conflicts. However such informal bodies are only as good as the persons composing them. In some cases they are able to evolve strategies for securing, if not absolute justice according to the law, at least an honourable compromise which will enable the women to live with some peace or mind. The sad truth is that many women, who arc victims of violence and aggression, do not seek justice, but only a way of survival. The nyaya panchayats and Mahila adalats can, in some cases, help to evolve strategies and compromises for survival.

However such informal bodies cannot help to enforce social legislation. There are very few cases where the aggrieved party files a complaint in the police station or in the court against those who violate the provisions of social legislation such as the Child Marriage Restraint Act, the Prenatal Diagnostic Techniques (Regulation) Act, The Prevention of Immoral Trafficking in Women & Children Act or any of the other enactments of social legislation. Most of the court cases pertaining to the Dowry Prohibition Act are with regard to dowry deaths and very few are connected with the demand for dowry, although this is prohibited under the Act. The reason is not far to seek - the aggrieved party in the case of social legislation is usually too helpless and weak to file a complaint. The foetus, which was aborted because it was female, the woman or child sold into prostitution and sexual slavery, the little girl given in marriage - these are not persons who are in a position to give a complaint. It is for the State to enforce social legislation by taking proactive steps to apprehend, with the help of both the law enforcing machinery and the general public, those guilty of breaking the law. The fact that there are hardly any cases pending in the courts of the land against those who have perpetrated these offences shows that these proactive measures have not been taken.

One reason for the State's failure to enforce social legislation by convicting the guilty under the law is the fact that most enactments of social legislation have been done under pressure from social reformers and women's rights activists. The Government obtains mileage from enactment of social legislation because it helps to project an image of progressiveness and liberal mindedness. However there is not sufficient or objective analysis done before enacting social legislation. There is no understanding or appreciation of the traditional beliefs or prejudices behind some of the practices which the legislation seeks to abolish. In fact, even though the legislation is almost invariably enacted in response to demand from women activists, the sections of the law are very often not in accordance with the demands of the activists. Even the recommendations of the Law Commissions and Joint Committees of Legislature sometimes do not find a place in the enactment. The process of law making is therefore not sufficiently participatory. The resultant legislation is often toothless and does not address the real issues. An example is the Dowry Prohibition Act, 1961 which was a totally effete piece of legislation in its first incarnation. It was amended twice thereafter after persistent demands by activists. However even at the time of amendment, important recommendations of the Joint Legislature Committee were ignored and continue to be ignored. No in depth analysis of this social custom was done while enacting the legislation and there was no recognition by the Government, or even by the activists, of the real reasons for the continuation of dowry. However the point is being made that the initial legislation was perfectly useless and it was only after twenty years, and after much energy and time had been spent by the activists in campaigning for amendments, that any improvement was made in the legislation. Even now it is far from perfect and does not address the crux of the problem.

The Dowry Prohibition Act, 1961 may have been purely ornamental but there is some legislation- or proposed legislation - which would do more harm then good to women. An example is the Protection from Domestic Violence Bill, 2002 which was meant to honour India's commitment to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) by recognizing domestic violence as discrimination against women. It was also recognition of the demand of the women's movement for a civil law on domestic violence as there was a realization that the criminal laws do not adequately serve the needs of women. In 1998 the Women's Rights Initiative of the Lawyers Collective drafted the Domestic Violence to Women (Prevention) Bill (the "LOWRI Bill") after detailed discussion with various women's groups. This Bill was modelled on the United Nations Framework for Model Legislation on Domestic Violence. The LOWRI Bill clearly and comprehensively defined domestic violence as any act, omission or conduct which is of such nature as to harm or injure or has the potential of harming or injuring the health, safety or well being of the person aggrieved or any child in the

domestic relationship and includes physical abuse, sexual abuse, verbal and mental abuse and economic abuse. The terms physical abuse, sexual abuse, verbal and mental abuse and economic abuse are also comprehensively defined so that a woman can effectively claim relief under the proposed law when faced with domestic violence and no judge will be able to say that since marital rape is not an offence in India, a husband cannot sexually abuse his wife. The Bill also covers a wide range of women, who, if in a "domestic relationship" with the respondent, could avail the relief mentioned under the proposed law. The LOWRI Bill also provided for a very wide range of reliefs that a woman facing domestic violence can claim. She can get a 'no domestic violence' order from the judge against the perpetrator and also claim a right to residence in the shared household, temporary custody of her child, maintenance, return of her stridhan, compensation for injuries suffered and so on. These orders could also be passed ad-interim and ex parte. The LOWRI Bill also provides for the appointment of "Protection Officers" through a transparent mechanism who shall assist the woman in tiling her case and implementing the order of the court.

When, after much pressure from the women's groups, the Government of India introduced a Bill on domestic violence in the Lok Sabha (Bill no.133 of 2001), titled the Protection from Domestic Violence Bill, 2001, it invited sharp criticism from the women's movement. The Bill is not just unhelpful but actually dangerous in its implications for women as it not only fails to define domestic violence to include economic, mental and sexual violence but goes on to imply that if the assault on the woman is not habitual, it is not domestic violence. The meaning of 'habitual' is left to the imagination or judicial interpretation. As if this was not enough, the Government of India Bill provided for a right to self-defence to the perpetrator of violence and also a right to inflict hurt on a woman in defence of property! There were many problems with the Bill ranging from its definition of domestic violence to the relief granted, to the provisions establishing protection officers. It contained no provision for a right to reside in the matrimonial home. It also contained a provision for the mandatory counselling of the aggrieved woman. It is accepted by the Government that domestic violence is discrimination against women and a violation of human rights. Yet this human right is being undermined in the proposed law itself.

Fortunately there was much public protest against the Bill and women activists were successful in getting the Bill referred to the Parliamentary Standing Committee for the Ministry of Human Resources Development. After holding hearings with women's groups and organisations and various institutions and NGOs, the Committee submitted its recommendations to the Parliament. The recommendations contain most of the provisions or the LOWRI Bill. Parliament is yet to pass the law on domestic violence.

This rather long description of the history of the Bill on domestic violence is given in order to portray the various forces involved in the passage of a law and how social legislation for women, if not drafted by those who strongly believe in gender equality and human rights, can have disastrous consequences.

Since as explained earlier, the State has to be the primary agent for enforcement of social legislation, the Government, while enacting the law, will have to set up the mechanism for enforcing it. This includes a separate provision of budgetary support, which should be included in the legislation itself. In the absence or an enforcing mechanism and budgetary support, it cannot be assumed that the Government is serious about enforcement of the law. For instance, the Dowry Prohibition Act provides for the establishment of Dowry Prohibition officers. However there is no indication of the powers of these officers or guidelines regarding their duties. There is no budgetary support for their training, for execution of their duties or for giving publicity to the provisions of the Act.

Another example is the Child Marriage Restraint Act, one of our oldest Acts and still violated in most States, including Karnataka. In spite of the fact that this is one of the grossest infringements of human rights, the Government has set up no mechanism to enforce the Act. It is only when minors are included in mass marriages, which are invariably inaugurated by senior politicians, that the resultant bad publicity in the media forces the Government to acknowledge the fact that child marriage continue to take place.

Many enactments of social legislation, particularly those pertaining to women, are inter-linked and they cannot be enforced unless these linked enactments or supportive policies of the Government are successfully implemented. For instance, in order to enforce the Child Marriage Restraint Act the Government should make it mandatory (and position the infrastructure necessary to make it a reality) that all girls should be educated till the age of eighteen, which is till class 12. This will not only help to enforce the Act but also achieve many other purposes. Similarly, the fact that Government has not taken any proactive measures to help women claim equal property rights with their brothers, certainly comes in the way of the successful enforcement of the Dowry Prohibition Act.

Social legislation cannot be enforced in the absence of strong supportive institutions. Where are these institutions? For instance, the causes for much domestic violence and misery as well as for the desertion and consequent destitution of women and children is bigamy. However in the

absence of the compulsory registration of all marriages, it is very easy for women to be cheated. Similarly the efficient and compulsory registration of births is required to enforce both the Child Marriage (Restraint) Act and the Act prohibiting and regulating child labour.

To sum up, social legislation is very often enacted to please a pressure group and without sufficient seriousness of purpose. In the West if laws are enacted, they are expected to be obeyed. In order to held do this, they build the connected enforcement strategies and allocate the required resources. But in India it is almost as though nobody, including the Government, really expects the law to be obeyed. In. Raja Ram Mohan Roy's time social legislation, such as the law against sati, may have been enacted primarily with an educational purpose. But we are no longer under a foreign ruler and it is our own duly elected Government which has passed the law. The Government should pass laws carefully, after due consultation, and should set up the mechanisms and provide the resources to enforce them.

The laws are also not based on clearly expressed social policies. The Government has not enunciated a clear gender policy or human rights policy, which it then seeks to implement seriously with all the resources at its command.

In addition to having no mechanisms for enforcement, there are no mechanisms in place for monitoring the enforcement. The monitoring of the enforcement of social legislation pertaining to women is ultimately the responsibility of the district officers of the Women and Child Development Department. These deputy directors have to implement the schemes of the department pertaining to the development of women as well as children, including the prestigious Integrated Child Development Services Scheme. In addition, they have to implement the income generating and entrepreneur development schemes of the Women's Development Corporation as well as the schemes of the Disabled Welfare Department. In all they have some forty schemes to implement. In addition, they have to attend the meetings of the Zilla Panchayat and the Deputy Comm:ssioner and do the tasks allotted to them by the Deputy Commissioner or Zilla Panchayat. They also have to attend meetings called by the head of the Department, the District Minister, the Department Minister and local authorities. To expect them to monitor the enforcement of all the laws pertaining to social legislation without any guidance or support whatsoever is expecting too much. In fact it is not really expected.

The National and State Women's Commissions can take on some of the responsibility for monitoring. However these, particularly the State Women's Commissions, are not strong organisations and their powers are not clearly laid down. In addition these organisations are only as good as the persons nominated to them. Very often the persons nominated are not those with knowledge and long years of experience in working in the field of women 's rights or human rights but are political appointments.

The women's groups and NGOs who campaigned to get the Acts passed do not usually remain in the picture thereafter to ensure successful implementation. Participating in a fierce campaign for a short period is relatively easy; it is also exhilarating. When the Act is passed, even if it is not quite in the way the women's groups wanted it, there is a general feeling of euphoria. However, monitoring the enforcement requires long, sustained effort and in the face of Government apathy and lack of public interest, it can be frustrating and heart breaking. Women's groups are however now acknowledging that such sustained effort, which will involve following up of individual cases, interacting with Government officials, articulating complaints when required, providing legal assistance and other help to women, are all measures required to be done to ensure even a modicum of enforcement. However few women's organisations and other non-government organizations have the stamina or financial backing for such sustained effort.

There is not sufficient appreciation of the fact that it would be easier for women to come forward to enjoy the rights conferred on them through the Constitution and through social legislation, if they are educated and economically independent to at least some extent. Government has not, in the field of development, done enough to ensure that the obstacles in the path of girls and women are removed so that they become the equal of men educationally and economically. Although some effort has been made to improve the literacy and educational levels of girls, they are far from sufficient. On the other hand, instead of positive discrimination to help them come up, girls and women often face discrimination in the implementation of Government schemes. An example in Karnataka is the number of pre-matric hostels provided for scheduled caste, scheduled tribe and backward class children allocated for boys and girls respectively (Department of Social Welfare, Government of Karnataka 2002). It is seen that despite the fact that the literacy and educational levels of scheduled caste and backward caste girls lag far behind those of boys, 82% of the hostels are for boys and only 18% are for girls. This is despite the fact that it is girls who really require hostels because of the reluctance of parents to send them to a high school which may be at some distance from the village, where the parents fear (the fears are often well founded) they may face sexual harassment or even rape on the way to school and even in the school at the hands of the male teachers or older students.

Today the virtue of gentleness and tolerance are held to ridicule. There is a marked increase in aggressiveness and consumerism in our society, which leads to ruthlessness and violence. This attitude extends even to children, who are taught to value marks above anything else because marks means money. The fact that the humanities are-given second preference by most students is an indication of the value system.

The policy of liberalization and the opening of the world markets have brought with them an increase in consumerism and greed. Even children are often valued not for themselves, but for money. This is why sons are valued and desired - because they bring in money whereas daughters are less valued because money has to be paid out on their marriage. What greater epitome of selfishness can there be than the parents who send a brutalized girl back to her tormentors or who accept money to make an 'out of court' settlement with her murderers? There are even parents, unbelievable though it may seem who give a second daughter in marriage to the same murderer. When natural human affections can be sacrificed so easily, can it be expected that strangers will link hands in a community programme to ensure that such violence is not tolerated in their neighbourhood? Public apathy is in fact another factor for the increasing violence against women in both public places and in the home.

The increase in fundamentalism in all communities in recent years also feeds the fires of intolerance and violence. The first casualty of fundamentalism is women. At best it curtails their freedom and destroys the equal rights of women, at worst it unleashes on them the savagery of communal hatred, as witnessed in the Gujarat riots in which the victims of the most bestial crimes were undoubtedly women. Religious fundamentalism and communal hatred are the greatest threats today to the expression and enjoyment of human rights.

7. Recommendations

7.1 Summing Up

The Constitution of our country confers equal rights on all its citizens - men and women. India has signed international treaties regarding the equal rights of women. We are a signatory to the Beijing Platform for Action and have, in 1993, ratified the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), variously known as the "Women's Convention" and the "Women's Bill of Rights". There is a plethora of laws to ameliorate the condition of women and to grant them equal rights. Despite all this, the practical realization of these rights by women is extremely unsatisfactory and a matter of grave concern. In many ways, with globalisation, increase in consumerism, the growing criminalization of politics and the withdrawing or the State from many areas of public concern, the condition of women is deteriorating rapidly. Neither education nor prosperity has helped to improve the status of women. Thus the lowest - and most steeply declining - juvenile sex ratios are found in the most prosperous parts of the country - Punjab, Haryana, Gujarat and Delhi, particularly south western Delhi which is the richest district in Delhi. Obviously wealth and education only help people to give expression to son preference by accessing modern technology to eliminate baby girls even before they are born. Maternal and infant mortality figures are still among the highest in the world.

Significant gender disparities continue in all-important areas of development access to health care and nutrition, all levels of education, employment and income and representation in public affairs, politics and Government. Two thirds of the children out of school are girls. Less than 8% of Parliamentary seats, less than 6% of Cabinet positions and less than 4% of seats in High Courts and the Supreme Court are occupied by women. Less than 3% of administrators and managers are women. Violence against women is a 'high growth' sector. It is estimated that a rape occurs every thirty four minutes and that every ninety three minutes a woman is killed. The enormity and prevalence of domestic violence is yet to be recognized.

The trouble is that our society continues to be deeply patriarchal and pious expressions regarding equal rights do not always result in action to ensure that women actually do enjoy those rights. Although there has been some improvement in the status of women since independence, with more women being educated and having careers and professions, there has not been sufficient change in social attitudes regarding women. The same patriarchal mindset continues to hold sway in the judiciary, the legislature, the administration, the professionals, including doctors, lawyers and teachers, the police at all levels and in civil society.

In a study conducted in 1996, 109 judges were interviewed to assess their attitudes to violence against women.

- **48% believed that there were certain occasions when it was justifiable for a husband to slap his wife.**
- **74% believed that the preservation of the family should be the women's primary concern even if she faces violence.**
- **68% believed that 'provocative" clothes were an invitation to sexual assault. 34% believed that dowry has an inherent cultural value.**
- **55% believed that the moral character of the woman is relevant in cases of sexual abuse.**
- **9% believed that a woman who says 'no' to sexual intercourse often means**
- **"yes" .**

Source: Sakshi 1998

The increase in consumerism and rise in expectations regarding the standard of life have resulted in many families encouraging women to work outside the home to augment the family income. However the fact that a woman works and earns money does not automatically improve her status or confer her autonomy; very often her freedom to move outside the home is restricted to going to work and she has no say in how her earnings are spent. Besides this, the fact that she works outside the house does not alter the perception that her 'natural' role is that of wife and mother, with the result that she continues to be responsible for housework and child care and thereby, shoulders a double burden. Her position within the home continues to be that of subordination and dependency.

The cultural ideal of a woman with little or no interest in property is well projected by the media and internalised by women themselves. The concept of female dependency results in the idea of marriage as the only source of physical and financial security for a woman, thus reinforcing the ideology that marriage is more essential for a woman than for a man and that a woman is somehow incomplete without a man.

These patriarchal values are at total variance with the concept of human rights of women adopted by CEDAW, which states that the Convention "recognizes the influence of culture and tradition in restricting fundamental rights of women and targets cultural patterns which define the public realm as a man's world and the domestic sphere as women's domain" (United Nations, 1979). The preamble of CEDAW states that "A change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality of men and women". Article 5 of CEDAW stipulates elimination of "prejudices and customary and all other practices which arc based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women".

The Government of India has ratified CEDAW but neither the Ninth Five Year Plan (1997-2002) which adopted the empowerment of women as one of its primary objectives, nor the National Policy on Empowerment of Women formulated in 2001, has explicitly stated that these patriarchal concepts regarding women are to be strenuously opposed by Government polices and programmes or that the tenets regarding women's human rights are basic to its philosophy. The concrete steps which are to be taken to ensure that these rights do not merely remain on paper but are actually enjoyed by women are also not indicated in either document.

The paper has, so far, after a brief overview of the history of social reforms and the campaign for equal rights, discussed how, despite Constitutional guarantees regarding equal rights, many laws are unequal for men and women. Others, although apparently gender neutral, are not so in application because of the unequal economic and social positions of men and women. It has been pointed out that substantive equality can be the outcome only when corrective action is taken to ensure that equality is the end result of the legislative and judicial process.

The paper has discussed at length two enactments of social legislation - The Dowry Prohibition Act, 1961 and the Family Courts Act, 1984 to show how social legislation has proved ineffective both because of lacunae and defects in the framing of the laws and lack of enforcement machinery and proper monitoring. It has also been pointed out that it is necessary to understand the reasons for the persistence of pernicious practices such as dowry, where there is need for attitudinal change towards daughters so that they enjoy the same educational opportunities and property rights as their brothers. The paper has discussed the criminal justice system and how difficult it is for women and other marginalized groups to access the courts or to get justice. Women are peculiarly disadvantaged because most of the crimes against them are committed within the home and by family members. The manner of investigation of the unnatural deaths of women has been discussed at some length and suggestions made for more collective investigation.

The paper has been written on the basis of discussions with lawyers, women's organisations and NGOs, Government officials, Family Court judges and counsellors, police officers and women's self help groups and after visits to Family Courts and a women's helping and counselling centre situated in the office of the Police Commissioner, Bangalore.

What has emerged from the study is the need to firstly, put in place a National Policy which will state its intention in unambiguous terms to ensure that women are not only given equal rights under the law but that they enjoy those rights. Women's equal rights should include

freedom from violence, both inside the home and outside it. The steps to be taken to enforce the equal rights should be spelt out in the policy.

Secondly, all laws should be framed or amended in order to confer equal rights on men and women. This will mean not merely formal, but substantive equal rights. The laws should be framed or amended in a participatory manner after consultation with women's groups.

Thirdly, social legislation should be backed by mechanisms for enforcement and monitoring, along with the budgetary resources required. Supporting institutions are also necessary for effective enforcement.

Fourthly, Government needs to create an enabling environment by ensuring that women benefit equally with men in all Government programmes and policies. Gender budgeting should be done to eliminate gender disparities in literacy and education, health, training and employment opportunities. The criminal justice system requires to be revamped to ensure security and speedy justice for all citizens.

Lastly, and most importantly, efforts should be made in all possible ways to bring about attitudinal change for the creation of a more liberal, compassionate and just society.

In this last chapter the paper will briefly discuss how these various measures are to be implemented.

7.2 National policy

If women are ever to enjoy equal rights then it is essential that Government does deep and intense introspection and in consultation with women activists and organisations, frame a national policy, which clearly and unambiguously presents the State's recognition of the rights of women. The Policy should accept that women are independent individuals, that the roles of wife and mother are not to be universalised or naturalized, that marriage is not more necessary for a woman than for a man and that a woman should enter a marriage and remain in it only as a free and equal partner. The Policy should emphasize that domestic duties and child rearing are the fully shared responsibilities of both sexes and that women should be enabled to combine family responsibilities with work and participation in public life. Maternity is a social function performed by women and cannot be used to discriminate-against them.

The Policy should state in emphatic terms that the State will not tolerate any form of violence against women, whether in public or within the home. The Policy should recognize that the inequality of women is the result of social conditioning which requires corrective action, including the elimination of sexual stereotyping. The Policy should state its intention to ensure that there is no discrimination against women in the law, in practice, by the Government, by non Government groups or individuals or enterprises, in public life or in private life and that there is equality in all fields: civil, cultural, economic, social and political. The Policy should accept that rights have to be both *dejure* and *defacto* and that laws and polices should be supported by institutions and mechanisms for their operation.

The Government has to therefore pronounce a National Policy which will strike at the heart of the patriarchal value system. But this is not enough. The fact that the enforcement of social legislation has been such a failure demands concerted efforts on the part of all concerned - by Government and State actors, as well as by members of civil society such as teachers and students, professional men and women, activists and women's groups, public bodies, private enterprises and by neighbourhood groups so that affirmative action is taken to ensure that the Policy results in de facto equality and justice for women.

The Government will therefore have to delineate the practical steps to be taken to bring the Policy into effect. For too long have we been confusing the pronouncement of intentions, the passing of laws or the mere setting up of institutions with effective action. The efforts of the Government should be based on the principle of the substantive equality. These are (a) equality of opportunity, (b) equality of access to opportunity and (c) equality of results.

As regards equality of opportunity, the Government has to ensure that women's entitlements are on equal terms with those of men and that these are secured by a framework of laws and policies and supported by institutions and mechanisms for their operation. In order to achieve equality of access to opportunity the State must ensure that there are no obstacles barring women from enjoying or fulfilling their rights. Equality of results is what matters ultimately because the true indicators of the State's progress are not just what the State does but also what the State achieve in terms of actual change for women. It is here that India has faltered. Despite the many programmes and policies for women's development, figures and statistics as well as everyday perceptions show that equal rights for women are nowhere near achievement.

7.3 Law reforms

It is necessary, as a first step, for Government to examine all the existing social legislation and laws concerning women in the light of the anti patriarchal, progressive Policy proposed above. Amendments should be made where necessary to plug loopholes and new laws passed if required. Law reform will have to be done in a participatory manner after holding wide consultations with women activists and women's organisations. This will prevent the kind of lapses or grave errors that have occurred in the past while enacting social legislation. Lapses have been due to failure to understand the ideology behind harmful practices or because of the inbred patriarchal beliefs or those responsible for drafting and passing the bills that have come in the way of framing social legislation.

Law reforms have not till now fundamentally challenged and transformed the underlying assumptions regarding women. Dowry laws, for example, failed both to challenge attitudes about women and marriage, including parental pressure to marry off their daughters, and to link the problem of dowry with women's property rights in their parental home. Another example is the law on rape, with regard to which women activists have long been demanding several amendments, ranging from the definition of rape to the method of taking evidence. The Law Commission, which was asked to look into the matter, invited Sakshi and several other organisations to give their views after which it released its 172nd Report on the Review of Rape Laws in 2000. However when the Government enacted the amendment in the winter session of Parliament in 2002, it only partially accepted the Law Commission's Report. Not even the definition of rape has been amended although both the Law Commission and the women's groups had recommended it strongly. The recommendation, made both by the Law Commission and by the women's groups that the rape victim's past sexual history should not be used as evidence in a rape trial was excluded from the amendment and the demand that onus of proof regarding consent should be shifted to the accused was accepted only partially, that is, in the case of custodial rape.

Another example of law which need to be amended on the lines suggested by women's organisations is the Dowry Prohibition Act, where the women's organisations have been insisting on change in the definition of dowry, the removal of the penal clause with regard to the givers of dowry, placing a ceiling on gifts and marriage expenses and on making it mandatory to register gifts given to the bride or the bridegroom or members of the groom's family. Another example is that of the law prohibiting trafficking in women and children where it is normally

the prostitutes who are being penalized. Women activists have long been agitating against this and also for amendment to the Act to penalize male clients, particularly those who have sex with children. The sections 497 and 498 in the Indian Penal Code, which deal with adultery, should be repealed since they are insulting to women, as explained earlier - they are based on the concept of women being the property of men. The Protection from Domestic Violence Bill should be passed on the basis of the recommendations of the Parliamentary Standing Committee for the Ministry of Human Resources Development in its 124th report. The definition of domestic violence should be in accordance with that in the United Nations Framework for Model Legislation on Domestic Violence.

Women activists now state emphatically that a campaign needs to be mounted around the economic rights of women. The enjoyment of property rights secures the woman against infringement of other rights, including that against violence. A study by Pradeep Kumar Panda of the Centre for Development Studies (2003) showed that 49% of propertyless women had suffered long term physical abuse from husbands and 82% had suffered psychological abuse as against 8% and 16% respectively in the case of women having a house or land in their name.

The Hindu Succession Act should be amended to give daughters equal coparcenary rights. If a uniform civil code is not practical at present because of the prevailing atmosphere of communal tension, it will be necessary to ensure women's equal rights in property and manage within the framework of the personal laws of all communities.

However woman do not get equality to access of opportunity or equality of results merely by enactment of legislation giving them equal property rights. As earlier indicated in this paper, a recent study in seven States by the development sociologist Martha Chen (998) has shown that only 13% of the daughters of fathers owning landed property have inherited property from their parents. In almost all cases women are unwilling to force the issue or take their brothers to court to claim their legal share of the property because of the emotional pain involved and the fear that, by losing their brothers' good will, they will become more dependent on their husbands' families. Suggestions have been made that women's property rights should be made 'self executing' although how this is to be done without the woman taking some assertive steps in the matter is not clear. However the following are some suggestions made by Madhu Kishwar in *Manushi* (1988). They were made in the context of banning dowry when she had pointed out that banning dowry without ensuring that daughters enjoy the same property rights as their brothers would only help fathers and sons, not the girls.

1) Any document whereby a woman surrenders her rights in favour of her brothers, husband or in laws should be considered invalid.
2) A woman should not be able to pass on to her husband or in laws any property inherited from her parents. If she dies childless or under suspicious circumstances, the property should revert to the natal family.

The law could also be amended to prohibit fathers from writing wills which will disinherit daughters and to provide that if daughters are disinherited, the land will lapse to Government.

Women activists have long been campaigning for enactment of laws which will give women the right to stay in the marital home even after breakdown of the marriage and an equal share in any property acquired during the course of the marriage in the event of the breakdown of the marriage. (According to the present law, as explained earlier in the paper, each partner retains what he/she brought into the marriage and what has been acquired in his/her name during the course of the marriage. This really means that a divorce renders most wives destitute). An amendment to marriage laws giving women equal share in any property acquired during the marriage involves recognition of the fact that even if, because of the sexual division of labour, the wife does not 'work', she still makes a valuable contribution within the home which enables the husband to earn. It is only fair therefore that whatever property is acquired during the course of the marriage belongs to both partners and should be equally divided between them if the marriage breaks up.

This law regarding equal marital property rights exists in the United States as well as European countries. In fact it existed in Goa. However in this country it is a revolutionary and for some - a horrifying concept. The paper has already described the shock with which the idea was received by judges of the Family Court in a meeting in Bangalore. The immediate reaction was that such a law could encourage many more women to break up their marriages, leading to a great increase in the number of divorces. They were also afraid that it would encourage women to misbehave. It is a sad commentary on Indian family life if it is only the fear of destitution that keeps women in the marriage. Such a marriage based on unequal power relations can be good for nobody, including the children. On the other hand, equal marital property rights for women in the event of break up of the marriage, will alter the power equations within a marriage, will discourage men from abusing their wives and inhibit domestic violence or intimidation. It is therefore necessary that the Government enact a law making it mandatory that all property acquired after a marriage be in the joint names of husband and wife and that the wife get an equal share on

dissolution of the marriage. A small beginning in this direction has been made in Karnataka under the Government Ashraya Housing Scheme, where the title deeds of the house are issued in the name of the woman.

The above is only an example of how all the laws pertaining to women should be formulated or amended after examining them in detail with the intention of securing substantive equality for women.

7.4 Enforcement

The mistake made till now is to assume that laws will enforce themselves without any special efforts being made by the Government. However laws which are poorly conceived, indifferently enforced and casually reviewed have very grave consequences. It is meaningless to enact social legislation without putting in place the mechanism and infrastructure to enforce it and without providing the necessary resources.

Each law should be seen in the context of its substance, structure and culture. The substance refers to the clauses or sections of the law which, as has been pointed out, should be framed carefully, in a participatory manner and after due consultation with women's organisations. The structure of the law refers to the details of how it is to be implemented. This has to he understood and clearly enunciated. For instance, structure of the law in the case of the Dowry Prohibition Act will include, among other things, the manner in which the complaint is to be written and to whom it should be given, as well as details of the powers and responsibilities of the Dowry Prohibition Officers and the resources to be placed at their disposal in the discharge of their duties. The Equal Remunerations Act is a pitiful failure because no attention has been given to the structure of the law. There are no guidelines as to how work is to be measured or mechanism set up to determine equal work in different types of jobs in an industry. In the absence of such mechanism women's work, involving different skills from those of men, is grossly underpaid. The culture of the law is the philosophy behind its enactment. It is necessary to understand this in order to enforce it in letter and spirit.

For example, the philosophy behind the Prenatal Diagnostic Techniques (Regulation) Act is that although abortion is not illegal, it is unethical and discriminatory to conduct an ultrasound examination in order to ascertain the sex of the foetus or to abort it because it is female. Similarly the philosophy behind the Dowry Prohibition Act is that demanding money from the parents of

the girls is wrong because extortion is unethical, it is an act of discrimination and because it violates the concept of marriage as a relationship based on equality and mutual respect.

The substance, structure and culture of each law should be given wide publicity and be discussed in the media at the time of its enactment or revision so that the public can understand the implications of the law and help to enforce it

The enforcement of social legislation pertaining to women will be the responsibility of the police, the officials of the Women and Child Development department and, sometimes, revenue officers. No guidelines have been given to these officials with regard to enforcement of social legislation. A recent news item has mentioned how the police department insisted that the Women and Child Development department officials were responsible for enforcement of the Child Marriage Restraint Act whereas that department's officials complained that the police were not doing their duty. It is therefore necessary to examine the 'structure' of each law carefully and determine who is to be responsible for what actions. Guidelines have to be issued and training given to the concerned officials so they will have no doubt about their responsibilities. The Government will also have to ensure that the required funds are placed at their disposal. This can be indicated in the Act itself.

The police department in Karnataka has initiated, as part of its induction training for new recruits at the level of the constable and sub inspector, a five-day course in gender sensitisation. The new recruits should, along with this, be given intensive training in the role and duties of the police in each or the enactments of social legislation pertaining to women. In addition to this, in-service training at regular intervals should be given to the police at all levels on the enforcement of social legislation pertaining to women. Modules for the training have to be carefully prepared.

Similar training modules should be prepared for other enforcement agencies such as the officials of the Department of Women and Child Development and for Executive Magistrates. Gender sensitisation and training programmes are also required for the judiciary and public prosecutors.

Court judgments relating to the enforcement of social legislation and to cases of atrocities against women should be regularly circulated to the enforcement agencies for their guidance, along with an explanatory note. The Director General of Police can be made responsible for this.

It has already been mentioned that it would be difficult for the officials of the Women and Child Development department to effectively enforce social legislation because of their

multifarious duties. In order that they discharge their duties efficiently with regard to both women and children it is necessary to have separate field departments for women and children. The concept of one department to implement schemes for both women and children arose from the belief that the chief duty of the State with regard to women was in connection with their roles as mothers of small children. Since this is no longer the case, and the State is required to protect and enforce the rights of women as well as those of children (which are very different) and set up the mechanisms and institution for doing so, a very different approach is required. A separate department for women with separate district level officers and supporting staff is therefore essential to give a strong impetus to the enforcement of social legislation. These officers will be given powers, which they will exercise, and responsibilities, which they will discharge under each Act. They will co ordinate with NGOs and citizens' groups, with the police and the courts to enforce social legislation. They will in addition implement schemes for women and ensure that women benefit adequately from the schemes of other departments.

7.5 Infrastructure

Laws cannot be enforced in the absence of supportive infrastructure. Women are often unable to walk out of violent marriages because, in the absence of any rights in their natal homes, they have nowhere to go. It is therefore necessary for the Government to support non-government organisations (NGOs) in setting up short stay homes or temporary shelters. These short stay homes should not be horrid places where the women are virtual prisoners, as is often the case at present, but pleasant residences where they are treated with respect and kindness and given legal assistance, psychological counselling, education, training and job placement services. Minimum standards should be determined and prescribed by the Government for these institutions and monitoring done by the district officers of the Women and Child Development Department and by the State Women's Commission. External evaluation should also be done every three years. There should be one such short stay home in every taluk with help lines attached to them so that women who fear they are in physical danger can be instantly rescued by the police.

Another form of infrastructural support would be the availability of non-commercial lawyering - groups of lawyers, particularly activist women lawyers, who can have regular practice but are in addition paid by the Government to assist women fight their cases in the court. They could also provide legal support systems for women who have to take difficult decisions such as claiming inheritance rights. These lawyers should be paid a substantially higher fee for winning cases. Paralegals could also be appointed in Family Courts for assisting women.

7.6 Monitoring

Continuous monitoring is the price of effective enforcement. The monitoring mechanism should be clearly included in the Rules to the Act. The monitoring should not confined to the review of statistics, although these are also necessary but be a detailed, flexible, case by case examination to the constant refrain of "has the law, as it is now implemented, really helped women? How can the law be enforced so as to help women better?" The best way to monitor the enforcement of social legislation is with the help of a Government - NGO partnership. NGOs, particularly those of women activists, should be a formal part of the monitoring mechanism and, by getting the facts of each case through actual involvement in the field, assist the Government both in effective monitoring and in developing alternative strategies for enforcement. The NGOs should be given some financial support by Government for doing this. The Supreme Court has already, in some cases, directed the Government to enter into a partnership with NGOs for enforcing a social measure; a recent case being that in which the Delhi Municipal Corporation was directed to work with Manushi. The formal recognition of their role by Government along with financial support will help women's organisations to have the stamina required for the long sustained effort needed for enforcement of social legislation.

The NGO - Government partnership for the purpose of social monitoring should be at the district as well as State level. At the district level the monitoring should be done on a stipulated date every two months by a Committee consisting of two or three NGOs selected by the district administration and by the district NGO network (these should preferably be women's organisations, headed by women), the Superintendent of Police, the deputy director, Women and Child Development Department and the public prosecutor. The Committee should review investigation and prosecution of cases of atrocities against women as well as the enforcement of social legislation pertaining to women. Victims and complainants should be invited to attend the meetings. Minutes of the meeting should be sent to the Secretary as well as the Director, Women and Child Development Department, as well as to the Director General of Police.

-At the State level the Committee can be headed by the Minister, Women and Child Development Department. The Secretary, Women and Child Development Department, the Secretary, Home Department, the head of the Police, the Director of Public Prosecution and one or two State level women's organizations should be members of the Committee. The Committee should meet once in a quarter to review all cases of atrocities against women pending at the investigation stage for six months or more. The Committee should also, at a separate sitting every quarter,

review the enforcement of social legislation. Members of the public should be permitted to depose before the Committee during this time.

What is really important, at every stage of the process of realizing women's rights, whether it is at the stage of law making or enforcement and monitoring, or the formulation or implementation of programmes to help build a conducive environment or the setting up of institutions, is continuous introspection and going into details. It is always necessary to ascertain what the end result of every action is and whether this has conferred equality on the woman, helped her to enjoy her rights or to make her life easier. The interim measures of the process should not be confused with the end result This aspect of enforcement and monitoring of social legislation as well as of Government programmes should be stressed in all training programmes for Government officials and NGOs.

An example is the case of women's self help groups, of which there is a large number in almost all States. They have saved an enormous amount of money which they lend among themselves. Some have also borrowed from banks to take up income generating activities. No doubt many of the women in self-help groups have become more self confident and have gained the respect of their families. But it would be wrong to assume that a savings and credit activity will automatically confer empowerment on the women of a self-help group. By going into details it is possible to ascertain whether the women have really benefited or have in fact suffered after joining the group. It may be that they have had to starve or deprive themselves in order to save the mandatory Rs.10 every week. It is certainly true that in many cases the husbands of these women 'allow' them to join the group only because it puts money into their hands. There have been reports that dowry demands have escalated because of the availability of the women's money. It is certainly true that most of the groups do not discuss the issues that do matter a great deal in their daily lives, such as marital violence and atrocities within the home, possibly because these subjects are not within the accepted parameters of the training given to them by NGOs and the Government. Finally the measure of success of the self-help groups should be in the difference it has made to the women - are they eating better? Are all the members of the family eating together? This would certainly be an almost revolutionary step towards equality where traditionally women and girls eat last and least. Are girls and boys treated the same - given the same affection and importance, sent to the same schools, given the same health care? Is there less violence in the house? Do the women playa larger role in decision making?

7.7 Institutions

In its first report to CEDAW the Government had indicated the setting up of institutions such as the National Women's Commission and the State Women's Commissions as indicators of its sincerity in taking proactive steps towards ensuring women's rights and equality. Howeverthese institutions have not been given many powers, are basically recommendatory bodies and their resources are meagre. If the test of 'end results' in applied in the case of these institutions the findings will not be encouraging

It is necessary to set up a mechanism for selecting the right persons for these bodies. It is also important to give them sufficient powers and resources so that they can function collectively. These are really Commissions for Women's Rights and can be given powers similar to those of the National Human Rights Commission (NHRC). The NHRC enquires into complaints of violation of human rights and while doing so has all the powers or a civil court trying a suit under the Code of Civil Procedure. In particular, it can summon and enforce the attendance of witnesses and examine them on oath as fell as cause the production of documents. It has the power to compel, under sections 176 and 177 of the Indian Penal Code, any person to furnish information, which it feels is relevant to the enquiry. The Commission, or any officer authorized by it, can enter any building or place to seize documents relating to the subject matter of the enquiry. It may, for the purpose of conducting an investigation, utilise the services of any officer or investigating agency of the Government. The NHRC shall 'be deemed to be a civil court for all purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure which relate to prosecution for contempt of lawful authority of public servants and for offences against public justice.

In addition to setting up institutions for supervision and monitoring of women's rights, the Government should also set up institutional mechanisms, which will create an enabling environment for enjoyment of those rights. Important examples are the registration of births and deaths and marriages. The registration of births is important to enforce the legislation on child labour and on child marriage and in cases of child abuse and rape. The Registration of Marriages Act was enacted in Karnataka in 1985 but is yet to come into force. The Government of India has stated in its declaratory statement to CEDAW that compulsory registration of marriages was difficult in a country like India. In fact, given the will, it would not be difficult to set up mechanisms for registering marriages in a functioning democracy like India with elected local bodies and a good administrative network. The compulsory registration of marriages will help to protect the rights of women in a country where bigamy is common among men. India should, therefore,

withdraw the declaration to this article and enforce the compulsory registration of marriages.

7.8 Budgeting and Financial Provisioning for an Enabling Environment

Laws cannot be enforced in a vacuum but require an enabling environment. For example, the Child Marriage Restraint Act will be easier to enforce if all children attend school. If the Government provided free, useful and enjoyable schooling to girls till the age of eighteen (that is, till class 12) there would be much less likelihood of the girl getting married before that age. Besides this, the girl would be in a better position to earn her living, become financially independent and to understand and access her rights. The litmus test of end results should be applied to important development programmes such as education, health, employment, training and rural development to ascertain whether women are benefiting equally with men and what should be done in these areas to confer equal rights and benefits.

Just as apparently gender neutral laws need not in fact be gender neutral because of the unequal position of women, so too, Government programmes and policies may not be gender neutral. Considerable effort and positive discrimination are therefore required to overcome both the disadvantages of the past and the social construction of inequality, as it exists today. For example, the fear of rape and sexual molestation is a very real fear in the minds of the parents of girls and of the girls themselves. Girls may therefore drop out at the high school stage since they will have to travel some distance to school. The absences of basic facilities such as toilets also discourage girls of high school age from attending school. The Government needs to understand the problem and take steps towards finding a solution. Girls' high schools, a much larger proportion of women teachers at high school stage, separate toilets for girls and boys in all the schools, provision of school buses for girls and a large number of girls' hostels are some measures, which will definitely help improve the situation. However all this requires money and the Government will have to commit itself to spending 6% of the GDP on education and earmarking a proportionately larger portion within the education budget for girls' education.

The huge increase in fees for professional colleges in the aftermath of the recent Supreme Court judgments going to have disastrous consequences for girls if remedial steps are not taken. In such a situation parents are more likely to spend money on their son's higher education than on their daughter's, even if the daughter is more gifted academically. The dowry to be given for the girl's marriage will also increase considerably with the increase in the expenditure on boys' education. The Government should come forward with a well thought out scheme of educational loans and scholarships to help both girls and boys enter professional colleges. Seats may also

have to be reserved for girls in professional colleges in future if it is found that the increase in the fee structure has resulted in fewer number of girls entering these colleges, Government of India has, in the last two years, initiated some attempts at gender budgeting and some States, including Karnataka, are earmarking 30% of the budget in all development schemes for women (Special Component Plan for Women, Government of Karnataka). However it is debatable as to how much a mechanical earmarking of the budget in different departments for women will really help women and there has been no effort to go into the details and analyse the effect or such earmarking. What is really necessary is to examine the needs of women in all developmental areas such as education, health, rural development, employment and training from their perspective of substantive equality, identify the measures to be taken to achieve such equality and budget for the same. What has been suggested earlier for the retention of girls in high school is an example of such gender budgeting.

Such an exercise would mean that the Government both in the Centre and in the States, will need to invest considerably more in the social sector. All State Governments are facing financial stringency and the first casualty in the case of budget cuts is the social sector. However it is always possible for Government to find the resources to fund priority sectors. What is necessary is to accept, and to declare, that human resources development and gender equality are priority sectors and allocate resources accordingly.

In order to take practical steps towards achieving substantive equality for women in development and employment it is necessary to obtain separate data by sex. For example, it is important to ascertain how many women access the public health system or private hospitals for women's health needs (that is apart from children's needs or for child birth) vis-à-vis men, or how many women benefit from the Government's employment generation schemes, as against men - and the reasons thereof. Similarly, in the case of poverty eradication schemes and income generating schemes for poor women, it is important to obtain data and identify the households, which are de facto headed by women (this comes to about 30% in rural areas) and target the female heads of households for assistance in these schemes. Government can then be reasonably certain not only that the poorest people are getting the assistance but also that the benefits are not actually cornered by men.

The Government will need to take proactive steps to ensure that there are many more women in the judiciary, administration and professions. The pressure on girls to get married and "settle" down by the time they are in their early twenties certainly curtails the time they have to join a

competitive field. In addition some of the rules of recruitment are grossly unfair. A few years ago a girl from South India, who topped the Civil Services examination, was allotted Assam as her cadre. Although neither men nor women may like to be allotted to the north eastern States, it is the girls' parents who hesitate to send them so far away. Besides this, the boys can get married (albeit for a smaller dowry) even if they are allotted an unpopular cadre and get wives to "look after them" whereas the girls are unlikely to find husbands in such circumstances. When this is the case, and when the percentage of women in the all India services is less than 10%, the Government should certainly take steps to make the process of allotment of cadres more friendly towards women and gender sensitive.

It is being increasingly recognized by women activists that the strongest support for women's autonomy is economic empowerment. If women have education, jobs and property, they will be able to stand up for their rights, negotiate more to their advantage, walk out of a bad marriage more easily and approach the courts for legal remedy from a position of strength. The Government should take proactive steps to help women to get remunerative employment. This can be done to some extent by relieving women of the responsibility of childcare by provisioning good day care centres and advocating flexi timings for both men and women so that both of them can share and discharge domestic responsibilities.

In addition the State should insist on an Equal Opportunities Policy being adopted by employers and enterprises in both the public and private sectors, as has been done in many foreign countries, so that procedures and practices are developed and applied which do not discriminate on the grounds of sex and marriage and which provide equality of opportunity for all job applicants and employees. The Equal Opportunities Policy will include taking action both to remedy the effects of past discrimination and to remedy present inequalities. Dynamic monitoring is an essential part of the process and will entail ensuring that there is a high representation of women at every level of the organisation The Government can encourage the private sector to adopt an Equal Opportunities Policy by offering tax exemption and other benefits. With more and more of the economy shifting to the private sector, it is important that the Government insists upon them adopting an Equal Opportunity Policy.

7.9 Law and Criminal Justice System

The paper has already discussed in some detail the improvements required in the criminal justice system. It is however to be re-emphasised that the rights of the victims require to be respected

much more. As stated by Rajeev Dhavan, the Supreme Court lawyer in 2003 "Law preserves status quo and cloaks injustice". The recent acquittals by the Gujarat High Court of the accused in the Best Bakery and other cases have proved what women and other disenfranchised groups have known for a long time. More courts and more efficient courts will help to speed the disposal of cases but most important is judicial sensitivity to victims. The plight of witnesses in criminal cases has also been pointed out in many pronouncements of the Supreme Court. They are forced to come again and again since the case gets adjourned several times, they are not given the minimal facilities while waiting for their case to be called, they are treated with disrespect and often humiliated in the courtroom and sometimes they are threatened, abducted or murdered. All this of course is manipulated by the lawyers and works to the advantage of the accused. The criminal justice system therefore needs to be thoroughly overhauled in the interest of the victim. As already indicated in the chapter on the Criminal Justice System the Government has to implement the recommendations of various Law Commissions and the Rebeiro Report.

It may be a good idea set up a police team in every district headed by a Deputy Superintendent of Police who will exclusively concentrate on investigation of crimes against women. The members of the team should be handpicked and given special training. It should, however, be emphasized that this team should not be used for any other purpose. As already stated, speedy disposal of cases in the court is of paramount importance.

Fast track courts should be set up exclusively to try cases of crimes against women. They should be given a time limit within which they should complete the case. Particularly in the cases of murders of women within the home, where it is so difficult to get evidence, delay in the court completely subverts the cause of justice.

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Since it is the State's first duty to maintain law and order, there is justification in recommending that the State pay compensation to a victim of violence, including domestic violence. This should be done as early as possible and certainly before the completion of the case. Victim compensation is part of the criminal justice system in several countries but in our country a beginning has been made in this area only in Andhra Pradesh.

In addition to improvements in police investigation, prosecution and court procedure, more attention has to be paid to the proactive role of the State in coming to the help of women facing overt threats of violence and preventing crimes from taking place. Joint and concerted action by the police and NGOs is crucial in this context. In the late 1980s an IPS officer called

Nissar Ahmed, who was Assistant Commissioner of Police (ACP) in Bangalore, showed how this could be done. He formed a team headed by a woman sub-inspector, with three other police officials of the rank of sub inspectors and head constables, a woman doctor and two social activists as members. He identified the areas in his jurisdiction with the highest record of domestic violence and unnatural deaths of women. Every day the team would visit houses in these neighbourhoods, covering twenty houses in a day. In each home they would question the women of the household, (the young daughters in law separately) in order to ascertain whether they were being subjected to violence. On the basis of such house visits they were able to identify the houses where girls were in imminent danger of their lives, the houses where they were being routinely beaten but did not face a life threatening situation and the houses where there was threat of violence but no overt act of violence. In the first type of case the ACP called the girls and their parents to the police station, made the parents take their daughters home, and filed cases against the husbands and in-laws. In the second type of case the husband and in-laws as well as the girl and her parents were called to the police station, the in-laws were severely warned and an undertaking taken from them that they would not ill treat the girl in future. For cases of the third variety the police called a meeting of all the women in the locality and stated that any case of domestic violence should be reported to them. By following this method of constant surveillance and monitoring, followed by swift action, Sri Nissar Ahmed was able to bring down by 70% the number of murders and suicides of young women in his jurisdiction.

The police should set up such police - NGO teams to visit every house on a continuous basis in areas, which are notorious for domestic violence. This will send a clear message that such violence will not he tolerated. It is to be stressed, however, that the system will succeed only if the ACP or OCP in charge of the area reviews the work of the team on a weekly basis and take prompt follow up action on the information obtained by the team.

Preventive action should also be taken by women's organisations forming neighbourhood groups of men and women who will visit houses where women are subjected to violence and warn the perpetrators of violence, work with the police to file cases against the culprits, hold meetings of residents in the locality to mobilize them to confront domestic violence and give support to women who wish to leave the house because of violence. The women's organisation will act as facilitator of the neighbourhood groups and monitor and review their activities. Vimochana is implementing a project of this type in two areas in Bangalore.

Government should give financial assistance to women's organizations and NGOs to

implement such projects. The projects should be regularly monitored and reviewed by the State Women's Commission and by the Department of Women and Child Development.

7.10 Publicity, Gender Sensitisation and Legal Awareness

Laws cannot change society; they can only point out the direction in which change is required. It is people who bring about social change and revolution begin in the minds of men. How can we bring about a counter culture which is liberating?

Cultural beliefs and dogmas are accepted unquestioningly because of a long history: or constant repetition. This is how social conditioning and cultural indoctrination takes place. In order to challenge patriarchal beliefs it will be necessary to reiterate continuously and in all forums the basic tenets regarding women's human rights so that they get internalised. The Government should be willing to spend a great deal of money on continuous and creativity planned and executed publicity campaigns declaring openly the premises of its Women's Policy - that men and women are equal beings and should enjoy equal rights in every way, that a man has no right to beat his wife under any circumstances and that such action is a crime, that girls have the same rights in their natal home that boys have and can return to it when they choose, that all property is to be divided equally among sons and daughters, that to discriminate among one's own children is a sin and that daughters as well as sons should look after their parents. These beliefs should be written up on public hoardings, on buses, shown on cinema slides and given publicity in different ways through all the media. Corporate bodies should also be encouraged to invest in such advertisements and publicity campaigns and given tax exemptions, if necessary, for doing so. Advertisements which discriminate between sons and daughters such as those which advise investment or saving for the "son's education and the daughter's marriage" should not be permitted. What is required is a blitzkrieg of publicity on these lines -something similar to the family planning campaigns of yesteryear or the pulse polio campaign of today. The important sections in social legislations such as the Dowry Prohibition Act or the PNDT Act should be given similar publicity.

The Indecent Representation of Women Act (1986) needs to be reviewed. Indecent representation of women should include depicting women in positions of servility and subjection. Many popular soap operas on television typically show the heroine enduring all forms of degradation and physical and mental abuse. This is disgusting and offensive. Commercial advertisements should promote the idea of shared domestic chores by showing men washing

shirts, ironing saris and cleaning the bathroom with Harpic. School textbooks should not be merely gender neutral but should show girls and women in a strong and positive light. It should be continuously reinforced that girls and boys should be given exactly the same treatment and that boys should help in domestic work and girls have time to play and have fun. Physical training and sports' should be made compulsory for girls in all schools, particularly in co education schools where boys tend to usurp the playground all the time. In addition, training in the martial arts such as karate should be a must for girls. They should also be taught cycling as part of the school curriculum so as to encourage mobility. Sexual stereotyping should not only be actively discouraged but all girls and boys should be encouraged to dream big and to feel confident that they can achieve anything. Sex education for adolescent girls and boys should be compulsory in ail schools

Legal awareness regarding human rights in general and women's rights in particular should be made part of the curriculum of the high school and in all college courses, including professional courses. Many years ago Doordarshan had shown a very interesting serial on legal awareness directed by the writer Mrinal Pande. Such television serials and radio plays combining entertainment with legal awareness on women's issues, would be of great help. Legal awareness is also required to be disseminated to women's self-help groups along with practical information on support systems available in the areas where the group resides. Legal awareness for self-help groups should not be restricted to doling out information; it should prove a dynamic instrument of social change.

Training modules in gender have to be prepared and training programmes organized to sensitise the judiciary, the legislature, members of local governments, the police, administrators at all levels, as well as teachers and doctors. The training should be on a core module with additional modules suited to the needs of particular groups. The training modules should be thought provoking and challenging and the training made an insightful experience. The modules will have to be revised and replenished from time to time as the need arises and innovative methods of training evolved; otherwise it might degenerate into boring homilies which none but the already convinced will care to attend.

The history of people's movements, whether it be the anti-apartheid movement in South Africa, the labour union movement or the civil rights movement in the United States, has shown that rights are rarely granted without a struggle. Women's rights too will have to be fought for. Although Government can motivate and sensitise Government functionaries and State actors to respond positively to the demand for equal rights for women in all fields, it is the women's

organisations themselves who have to come together to organize, plan and execute concerted struggles for the rights of women. They will need to identify priority areas to focus upon, hone their skills in dialogue, strategy and campaigning as well as bury differences and overcome divisive forces of caste, community, politics and ideology in order to convert the struggle into a mass movement. An excellent strategy would be to carry along with them the self-help groups who can form the grassroots women's movement. It is necessary that the self-help groups be trained in discussing issues of atrocities against women and equal rights and in evolving their own strategies to solve their problems through their united strength. The women's self help groups can, if united across territorial and caste/community barriers, affect a people's revolution for women's rights.

Men must also take part in this struggle since social transformation is not possible without their support. The women's movement will need to evolve new strategies to make men understand that women's equal rights is in their interest also, for, as Shelley said:

Can man be free if woman be a slave?
.. . . well ye know
What Woman is, for none of Woman born
Can choose but drain the bitter dregs of woe
Which ever from the oppressed to the oppressors flow.

Or, as IS Mill said more prosaically, "The subjugation of women is wrong in itself and one of the chief hindrances to human improvement."

In our country, women are the largest minority and the oppression of women is the gravest violation of human rights. But there are other oppressed groups also such as religious minorities, the dalits, the disabled and the very poor. None of these groups is homogenous and there are divisions of oppressed and oppressor within the groups themselves. An example is a recent case of a twelve year old dalit school girl who was raped repeatedly by her teacher, also a dalit, in front of her classmates. The parents of the victim as well as the parents of her dalit classmates, closed ranks behind the rapist for caste reasons and forced the girl to revoke her earlier statement that she had been raped. Women also, perhaps unsurprisingly, sometimes oppress other women. It is essential to teach moral values in school throughout the school years, inculcating the values of gentleness, tolerance and compassion to counter the forces of greed and violence which otherwise threaten to engulf the world. This inculcation of moral values should be totally delinked from any religious teaching and should be based on respect for human rights, recognition of the similarities of all human beings and the refusal to see any person as less than human or as the' other'.

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